

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1989
Extraordinary Session, 1989

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FOREWORD

This volume contains the Acts of the First Regular Session of the 69th Legislature and the Extraordinary Session held January 25—February 1, 1989.

First Regular Session, 1989

The First Regular Session of the 69th Legislature convened on January 11, 1989, and following election of officers of the two houses, the opening and publishing of the returns of the election of state officers at the general election held on the 8th day of November, 1988, all as prescribed by Section 18, Article VI of the Constitution of the State, the adoption of rules to govern the proceedings of the two houses and concurrently and separately acting on certain other matters incident to organization, took an adjournment until February 8, 1989, as provided by the aforesaid section of the Constitution. Reconvening, pursuant to the adjournment, the constitutional sixty-day limit on the duration of the session was midnight, April 8, 1989. The session was extended by Proclamation of the Governor, for the sole purpose of consideration of the Budget Bill, until April 12, 1989. The Legislature adjourned *sine die* on April 10, 1989.

Bills totaling 1,496 were introduced in the two houses during the session (868 House and 628 Senate). The Legislature passed 221 bills, 135 House and 86 Senate. Two bills (S. B. 388 and H. B. 2676) were found to be technically deficient and void after having been signed by the Governor. Four bills were vetoed by the Governor, 3 House and 1 Senate. Three bills became law without the Governor's signature, making a net total of 215 bills which became law.

There were 91 concurrent resolutions introduced during the session, 54 House and 37 Senate, of which 19 House and 7 Senate were adopted. Thirty-one House joint and 13 Senate joint resolutions were introduced, proposing amendments to the State Constitution. The Legislature adopted 1 Senate joint resolution and 2 House joint resolutions. The House had 24 house resolutions and the Senate had 39 senate resolutions, of which 10 House and 36 Senate were adopted.

The Senate failed to pass 51 House bills passed by the House, and 86 Senate bills failed passage by the House. Six Senate bills died in conference.

The House of Delegates impeached the State Treasurer and censured the State Auditor, replicating an almost identical procedure as was conducted in 1875.

Extraordinary Session, 1989

The Proclamation calling the Legislature into Extraordinary Session at 12:30 P.M., January 25, 1989, contained five items for consideration.

The Legislature passed 4 bills, 2 House and 2 Senate, and adopted 1 concurrent resolution, providing for a joint assembly to hear the Governor's message.

The Legislature adjourned the Extraordinary Session *sine die* on February 1, 1989.

This was the first occasion of the Legislature having met in Extraordinary Session prior to the Regular Session after a new Legislature had been seated.

This volume will be distributed as provided by sections thirteen and nineteen, article one, chapter four of the Code of West Virginia.

These Acts may be purchased from the Department of Administration, Purchasing Section, State Capitol, Charleston, West Virginia, 25305.

DONALD L. KOPP,
*Clerk of the House and
Keeper of the Rolls.*

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1989

OFFICERS

Speaker—Robert C. Chambers, Huntington

Speaker Pro Tem—Marjorie H. Burke, Sand Fork

Clerk—Donald L. Kopp, Clarksburg

Sergeant at Arms—Oce W. Smith, Jr., Fairmont

Doorkeeper—Dannie Wingo, Yukon

District	Name	Address
First.....	Patricia Bradley (D).....	Weirton
	Sam Love (D).....	Weirton
Second.....	Roy E. Givens (D).....	Wellsburg
	Bernard V. Kelly (D).....	Follansbee
Third.....	Andy Katz (D).....	Wheeling
	David B. McKinley (R).....	Wheeling
	Paul J. Otte (R).....	Wheeling
Fourth.....	Rodney T. Berry (D).....	Moundsville
	A. E. Tribett (D).....	McMechen
Fifth.....	Dave Pethtel (D).....	Hundred
Sixth.....	James E. Willison (R).....	Sistersville
Seventh.....	Otis A. Leggett (R).....	St. Marys
Eighth.....	Stephen C. Bird (D).....	Parkersburg
	Robert W. Burk, Jr. (R).....	Parkersburg
	A. V. Criss, III (R).....	Vienna
	J. Frank Deem (R).....	Vienna
	George E. Farley (D).....	Parkersburg
Ninth.....	Marjorie H. Burke (D).....	Sand Fork
	Randy Schoonover (D).....	Clay
Tenth.....	Bob Ashley (R).....	Spencer
Eleventh.....	Virginia Jolliffe Starcher (D).....	Ripley
Twelfth.....	Charley Damron (D).....	Leon
	Lydia D. Long (D).....	Pt. Pleasant
	Deborah F. Phillips (D).....	Scott Depot
	Patricia Holmes White (D).....	Poca
Thirteenth.....	Robert C. Chambers (D).....	Huntington
	Phyllis Given (D).....	Huntington
	Rick Houvouras (D).....	Huntington
	James Hanly Morgan (D).....	Huntington
	Evelyn E. Richards (R).....	Huntington
	Stephen T. Williams (D).....	Huntington
Fourteenth.....	Kenneth Adkins (D).....	Huntington
	Walter Rollins (D).....	Kenova
Fifteenth.....	Jim Reid (D).....	Williamson
	Mike Whitt (D).....	Meador
Sixteenth.....	W. E. Anderson (D).....	Logan
	Sammy D. Dalton (D).....	Harts
	Joe C. Ferrell (D).....	Logan
	*David E. Whitman (D).....	Logan
Seventeenth.....	Delores W. Cook (D).....	Ridgeview
Eighteenth.....	Ernest C. Moore (D).....	Thorpe
	Rick Murensky (D).....	Welch
Nineteenth.....	Richard Browning (D).....	Oceana
	W. Richard Staton (D).....	Mullens

* Appointed to fill the vacancy created by the resignation of Robert L. McCormick.

HOUSE OF DELEGATES

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Twentieth.....	Terry W. Basham (D).....	Rock
	**Tom Farmer (D).....	Princeton
	Richard D. Flanigan (D).....	Princeton
	Richard N. Kephart (D).....	Princeton
Twenty-first.....	Mary Pearl Compton (D).....	Union
Twenty-second.....	Robert S. Kiss (D).....	Prosperity
	Jack J. Roop (D).....	Beckley
	Arnold W. Ryan (D).....	Hinton
	Tom Susman (D).....	Sophia
	William R. Wooton (D).....	Beckley
Twenty-third.....	Ramona Gail Cerra (D).....	Charleston
	David Grubb (D).....	Charleston
	Barbara Burruss Hatfield (D).....	South Charleston
	James F. Humphreys (D).....	Charleston
	Danny Jones (R).....	Charleston
	Robert J. Louderback (D).....	Charleston
	Margaret Miller (R).....	South Charleston
	Phyllis J. Rutledge (D).....	Charleston
	Lyle Sattes (D).....	Charleston
	Rudy Seacrist (D).....	Charleston
	Henry Shores (R).....	Charleston
	Sharon Spencer (D).....	Charleston
Twenty-fourth.....	Paul M. Blake, Jr. (D).....	Fayetteville
	L. Dale Clonch (D).....	Fayetteville
	John W. Hatcher, Jr. (D).....	Fayetteville
Twenty-fifth.....	James J. Rowe (D).....	Lewisburg
	Bill Wallace (R).....	Clintonville
Twenty-sixth.....	C. Farrell Johnson (D).....	Summersville
	Eugene T. Wilson (D).....	Cowen
Twenty-seventh.....	Walt Helmick (D).....	Marlinton
	Joe Martin (D).....	Elkins
Twenty-eighth.....	Dale Riggs (R).....	Buckhannon
	Donald L. Stemple (R).....	Philippi
Twenty-ninth.....	Robert J. Conley (R).....	Weston
Thirtieth.....	Percy C. Ashcraft, II (D).....	Clarksburg
	Joseph M. Minard (D).....	Clarksburg
	Michael L. Queen (D).....	Clarksburg
	Barbara A. Warner (D).....	Bridgeport
Thirty-first.....	Nick Fantasia (D).....	Kingmont
	James L. Pitrolo, Jr. (D).....	Fairmont
	Roman W. Prezioso, Jr. (D).....	Fairmont
	Cody A. Starcher (D).....	Fairmont
Thirty-second.....	Michael A. Buchanan (D).....	Morgantown
	Stephen L. Cook (D).....	Morgantown
	Florence L. Merow (D).....	Morgantown
	Twila S. Metheney (D).....	Morgantown
Thirty-third.....	David E. Miller (D).....	Kingwood
	Fred C. Peddicord (D).....	Kingwood
Thirty-fourth.....	Marc L. Harman (R).....	Petersburg
	Robert A. Schadler (R).....	Keyser
Thirty-fifth.....	Harold K. Michael (D).....	Old Fields
Thirty-sixth.....	Jerry L. Mezzatesta (D).....	Romney
Thirty-seventh.....	Patrick H. Murphy (D).....	Martinsburg
Thirty-eighth.....	Larry V. Faircloth (R).....	Inwood
Thirty-ninth.....	John Overington (R).....	Martinsburg
Fortieth.....	Dale Manuel (D).....	Charles Town

** Appointed to fill the vacancy created by the resignation of Howard L. Wellman.

(D) Democrats.....	80
(R) Republicans.....	20
Total.....	100

MEMBERS OF THE SENATE

REGULAR SESSION, 1989

OFFICERS

President—Larry A. Tucker, Summersville
President Pro Tem—Tony Whitlow, Kellysville
Clerk—Todd C. Willis, Logan
Sergeant at Arms—Estil Bevins, Williamson
Doorkeeper—Porter Cotton, Cabin Creek

District	Name	Address
First.....	Thais Blatnik (D).....	Wheeling
	*John G. Chernenko (D).....	Wellsburg
Second.....	*Thomas E. Loehr (D).....	New Martinsville
	Larry Wiedebusch (D).....	Glen Dale
Third.....	Donna J. Boley (R).....	St. Marys
	*Keith Burdette (D).....	Parkersburg
Fourth.....	*Oshel B. Craigo (D).....	Hurricane
	Robert L. Dittmar (D).....	Ravenswood
Fifth.....	Homer Heck (D).....	Huntington
	*Ned Jones (D).....	Huntington
Sixth.....	*H. Truman Chafin (D).....	Williamson
	A. Keith Wagner (D).....	Jaeger
Seventh.....	*Lloyd G. Jackson II (D).....	Hamlin
	Earl Ray Tomblin (D).....	Chapmanville
Eighth.....	*John Boettner, Jr. (D).....	Charleston
	Mark Anthony Manchin (D).....	Charleston
Ninth.....	*Tracy W. Hylton (D).....	Beckley
	Juliet Walker-Rundle (D).....	Pineville
Tenth.....	*Frederick L. Parker (D).....	Greenville
	Tony E. Whitlow (D).....	Kellysville
Eleventh.....	*J. D. Brackenrich (D).....	Lewisburg
	Robert K. Holliday (D).....	Fayetteville
Twelfth.....	Jae Spears (D).....	Elkins
	*Larry A. Tucker (D).....	Summersville
Thirteenth.....	Bill Sharpe (D).....	Weston
	*M. Jay Wolfe (R).....	Clarksburg
Fourteenth.....	Joe Manchin, III (D).....	Fairmont
	*George Warner (R).....	Morgantown
Fifteenth.....	†Charles B. Felton, Jr. (D).....	Rowlesburg
	*C. N. Harman (R).....	Grafton
Sixteenth.....	Thomas J. Hawse, III (D).....	Moorefield
	*Sondra Moore Lucht (D).....	Martinsburg
Seventeenth.....	*Darrell E. Holmes (D).....	Charleston
	Charlotte Jean Pritt (D).....	Charleston

† Appointed May 21, 1987, to fill the vacancy created by the resignation of Gerald W. Ash.

* Elected in 1986. All others elected in 1988.

(D) Democrats.....	30
(R) Republicans.....	4
Total.....	34

COMMITTEES OF THE HOUSE OF DELEGATES

Regular Session, 1989

STANDING

Agriculture and Natural Resources

Buchanan (*Chairman of Agriculture*), Peddicord (*Vice Chairman of Agriculture*), Love (*Chairman of Natural Resources*), Whitt (*Vice Chairman of Natural Resources*), Ashcraft, Burke, Clonch, Compton, Hatfield, Martin, McCormick, Michael, Murphy, Pethtel, Pitrolo, Schoonover, Staton, Tribett, Warner, Wilson, Leggett, Overington, Riggs, Stemple and Willison.

Banking and Insurance

Phillips (*Chairman of Banking*), Minard (*Vice Chairman of Banking*), Bradley (*Chairman of Insurance*), Berry (*Vice Chairman of Insurance*), Adkins, Cerra, Dalton, Fantasia, Flanigan, Grubb, Houvouras, Katz, Kephart, Metheney, Michael, Queen, Rutledge, Susman, White, Wooton, Ashley, Criss, McKinley, Riggs and Shores.

Constitutional Revision

Given (*Chairman*), Wooton (*Vice Chairman*), Basham, Blake, Browning, D. Cook, Grubb, Humphreys, Kelly, Kiss, Long, Louderback, Manuel, Martin, Murensky, Phillips, Prezioso, Rowe, Sattes, V. Starcher, Faircloth, Overington, Richards, Stemple and Wallace.

Education

Sattes (*Chairman*), Ashcraft (*Vice Chairman*), Basham, Bird, Blake, Cerra, Compton, D. Cook, Dalton, Fantasia, Long, Merow, Mezzatesta, D. Miller, Pethtel, Queen, Spencer, Susman, Wellman, Williams, Leggett, Otte, Overington, Richards and Willison.

Finance

Farley (*Chairman*), Murphy (*Vice Chairman*), Adkins, Anderson, Browning, Burke, S. Cook, Hatfield, Helmick, Houvouras, Kiss, Minard, Phillips, Prezioso, Rutledge, Seacrist, V. Starcher, White, Whitt, Wooton, Burk, Conley, Faircloth, McKinley and Stemple.

Government Organization

Givens (*Chairman*), Flanigan (*Vice Chairman*), Clonch, Johnson, Kelly, Kephart, Louderback, Love, McCormick, Metheney, Mezzatesta, Michael, Morgan, Peddicord, Rollins, Ryan, Schoonover, C. Starcher, Tribett, Wooton, Criss, Riggs, Schadler, Shores and Wallace.

Health and Human Resources

Hatfield (*Chairman*), White (*Vice Chairman*), Berry, S. Cook, Browning, Fantasia, Flanigan, Katz, Louderback, Merow, Mezzatesta, D. Miller, Minard, Moore, Roop, Spencer, C. Starcher, Susman, Warner, Wilson, Ashley, Conley, Deem, Otte and Richards.

Industry and Labor

Moore (*Chairman*), Spencer (*Vice Chairman*), Adkins, Anderson, Bird, Clonch, Compton, S. Cook, Ferrell, Given, Long, McCormick, Metheney, D. Miller, Pethtel, Ryan, Schoonover, Wellman, Whitt, Williams, Deem, McKinley, P. Miller, Overington and Schadler.

Judiciary

Hatcher (*Chairman*), Humphreys (*Vice Chairman*), Berry, Bradley, Buchanan, Damron, Ferrell, Given, Grubb, Katz, Manuel, Martin, Moore, Pitrolo, Reid, Roop, Rowe, Staton, Warner, Wilson, Ashley, Deem, Harman, Jones and P. Miller.

Political Subdivisions

Roop (*Chairman*), Mezzatesta (*Vice Chairman*), Bradley, Damron, Helmick, Houvouras, Humphreys, Johnson, Kelly, Kiss, Manuel, Merow, Morgan, Murphy, Reid, Ryan, Seacrist, V. Starcher, Staton, Tribett, Harman, Jones, P. Miller, Shores and Willison.

Roads and Transportation

Anderson (*Chairman*), Pitrolo (*Vice Chairman*), Ashcraft, Basham, Blake, Buchanan, Burke, Cerra, D. Cook, Dalton, Ferrell, Johnson, Love, Morgan, Peddicord, Reid, Seacrist, C. Starcher, Wellman, Williams, Conley, Criss, Leggett, Schadler and Wallace.

Rules

Chambers (*Chairman*), Ashcraft, Burke, Farley, Givens, Hatcher, Murensky, Sattes, Seacrist, Wooton, Burk and Otte.

SPECIAL COMMITTEE**Corrections**

Pitrolo (*Chairman*), Berry, Helmick, Martin, Minard, Murphy and Jones.

JOINT COMMITTEES**Enrolled Bills**

Kelly (*Chairman*), Ryan (*Vice Chairman*), Sattes, Ashley and Jones.

Government and Finance

Chambers (*CoChairman*), Farley, Hatcher, Murensky, Sattes, Burk and Harman.

Joint Rules

Chambers (*CoChairman*), Murensky and Burk.

Legislative Rule-Making Review

Humphreys (*Chairman*), Murphy, Roop, V. Starcher and Faircloth.

COMMITTEES OF THE SENATE

Regular Session, 1989

STANDING

Agriculture

Parker (*Chairman*), Dittmar (*Vice Chairman*), Hawse, Holmes, Lucht, Rundle, Spears, Whitlow, Wiedebusch and Wolfe.

Banking and Insurance

J. Manchin (*Chairman*), Heck (*Vice Chairman*), Boettner, Craigo, Dittmar, Hawse, Jones, Loehr, Pritt, Rundle, Sharpe, Tomblin and Wolfe.

Confirmations

Whitlow (*Chairman*), Tomblin (*Vice Chairman*), Boettner, Burdette, Chafin, Jackson, Lucht, Parker and Harman.

Education

Lucht (*Chairman*), M. Manchin (*Vice Chairman*), Blatnik, Boettner, Brackenrich, Burdette, Felton, Hawse, Holliday, Jones, Parker, Wagner and Warner.

Energy, Industry and Mining

Sharpe (*Chairman*), Holmes (*Vice Chairman*), Brackenrich, Burdette, Chernenko, Felton, Hylton, Jackson, Loehr, J. Manchin, M. Manchin, Wagner and Harman.

Finance

Tomblin (*Chairman*), Sharpe (*Vice Chairman*), Boettner, Brackenrich, Burdette, Chernenko, Craigo, Hawse, Holmes, Jones, Loehr, Lucht, J. Manchin, M. Manchin, Parker, Spears, Wagner, Harman and Warner.

Government Organization

Spears (*Chairman*), Wiedebusch (*Vice Chairman*), Bracken-

rich, Burdette, Chernenko, Craigo, Felton, Jackson, Jones, Loehr, Lucht, J. Manchin, Tomblin and Boley.

Health and Human Resources

Holliday (*Chairman*), Pritt (*Vice Chairman*), Blatnik, Chernenko, Craigo, Hawse, J. Manchin, Sharpe, Spears, Boley and Harman.

Interstate Cooperation

Chafin (*Chairman*), Hylton (*Vice Chairman*), Dittmar, Heck, Holliday, Holmes, M. Manchin, Pritt and Warner.

Judiciary

Jackson (*Chairman*), Chafin (*Vice Chairman*), Blatnik, Dittmar, Felton, Heck, Holliday, Hylton, Pritt, Rundle, Whitlow, Wiedebusch, Boley and Wolfe.

Labor

Holmes (*Chairman*), Boettner (*Vice Chairman*), Blatnik, Chafin, Chernenko, Holliday, Hylton, Wagner, Wiedebusch and Boley.

Military

Felton (*Chairman*), Rundle (*Vice Chairman*), Blatnik, Chafin, Chernenko, Dittmar, Heck, Spears and Boley.

Natural Resources

Brackenrich (*Chairman*), Hawse (*Vice Chairman*), Boettner, Chafin, Craigo, Holmes, Hylton, Loehr, Parker, Spears, Whitlow, Wiedebusch, Harman and Warner.

Rules

Tucker (*Chairman*), Burdette, Craigo, Jackson, Loehr, Lucht, Spears, Tomblin, Whitlow and Harman.

Small Business

Jones (*Chairman*), Craigo (*Vice Chairman*), Blatnik, Holmes, Hylton, J. Manchin, M. Manchin, Pritt, Rundle, Tomblin, Warner and Wolfe.

Transportation

Craig (Chairman), Wagner (Vice Chairman), Brackenrich, Heck, Parker, Sharpe, Tomblin, Wiedebusch and Wolfe.

Ways and Means

Loehr (Chairman), J. Manchin (Vice Chairman), Brackenrich, Burdette, Craig, Jackson, Lucht, Sharpe, Tomblin and Harman.

SELECT COMMITTEES**Corrections**

Holliday (Chairman), Blatnik, Craig, Spears, Wiedebusch and Harman.

Teachers Retirement

Parker (Chairman), Burdette, Felton, Lucht and Warner.

Workers' Compensation

Sharpe (Chairman), Holmes and J. Manchin.

JOINT COMMITTEES**Enrolled Bills**

Parker (Chairman), Blatnik (Vice Chairman), Chernenko, Dittmar, Heck and Wolfe.

Government and Finance

Tucker (CoChairman), Burdette, Craig, Jackson, Sharpe, Tomblin and Harman.

Legislative Rule-Making Review

Loehr (Chairman), Holmes, Jackson, Tomblin, Harman and Warner.

Rules

Tucker (CoChairman), Burdette and Harman.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST REGULAR SESSION, 1989

CHAPTER 1

(Com. Sub. for S. B. 382—By Senator Chafin)

[Passed March 30, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six and seven, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to wrongful death damage award distribution and the removal of the requirement that the decedent's personal representative obtain consent to compromise such damages from persons entitled to a part of any award.

Be it enacted by the Legislature of West Virginia:

That sections six and seven, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-6. By whom action for wrongful death to be brought; amount and distribution of damages; period of limitation.

§55-7-7. Compromise of claim for death by wrongful act.

§55-7-6. By whom action for wrongful death to be brought; amount and distribution of damages; period of limitation.

1 (a) Every such action shall be brought by and in the
2 name of the personal representative of such deceased
3 person who has been duly appointed in this state, or in
4 any other state, territory or district of the United States,
5 or in any foreign country, and the amount recovered in
6 every such action shall be recovered by said personal
7 representative and be distributed in accordance here-
8 with. If the personal representative was duly appointed
9 in another state, territory or district of the United
10 States, or in any foreign country, such personal repre-
11 sentative shall, at the time of filing of the complaint,
12 post bond with a corporate surety thereon authorized to
13 do business in this state, in the sum of one hundred
14 dollars, conditioned that such personal representative
15 shall pay all costs adjudged against him and that he
16 shall comply with the provisions of this section. The
17 circuit court may increase or decrease the amount of
18 said bond, for good cause.

19 (b) In every such action for wrongful death the jury,
20 or in a case tried without a jury, the court, may award
21 such damages as to it may seem fair and just, and, after
22 making provision for those expenditures, if any,
23 specified in subdivision (2), subsection (c) of this section,
24 shall direct that the remaining net damages be distrib-
25 uted in accordance with the decedent's will or, if there
26 be no will, in accordance with the laws of descent and
27 distribution as set forth in chapter forty-two of this code.

28 (c) (1) The verdict of the jury shall include, but may
29 not be limited to, damages for the following:
30 (A) Sorrow, mental anguish, and solace which may
31 include society, companionship, comfort, guidance,
32 kindly offices and advice of the decedent;
33 (B) compensation for reasonably expected loss of (i)
34 income of the decedent, and (ii) services, protection, care
35 and assistance provided by the decedent; (C) expenses
36 for the care, treatment and hospitalization of the

37 decedent incident to the injury resulting in death; and
38 (D) reasonable funeral expenses.

39 (2) In its verdict the jury shall set forth separately the
40 amount of damages, if any, awarded by it for reasonable
41 funeral, hospital, medical and said other expenses
42 incurred as a result of the wrongful act, neglect or
43 default of the defendant or defendants which resulted
44 in death, and any such amount recovered for such
45 expenses shall be so expended by the personal
46 representative.

47 (d) Every such action shall be commenced within two
48 years after the death of such deceased person, subject
49 to the provisions of section eighteen, article two, chapter
50 fifty-five. The provisions of this section shall not apply
51 to actions brought for the death of any person occurring
52 prior to the first day of July, one thousand nine hundred
53 eighty-two.

§55-7-7. Compromise of claim for death by wrongful act.

1 The personal representative of the deceased may
2 compromise any claim to damages arising under section
3 five of this article before or after action brought. What
4 is received by the personal representative under the
5 compromise shall be treated as if recovered by him in
6 an action under the section last mentioned. When the
7 judge acts in vacation, he shall return all the papers in
8 the case, and orders made therein, to the clerk's office
9 of such court. The clerk shall file the papers in his office
10 as soon as received, and forthwith enter the order in the
11 order book on the law side of the court. Such orders, and
12 all the proceedings in vacation, shall have the same force
13 and effect as if made or had in term. Upon approval of
14 the compromise, the court shall apportion and distribute
15 such damages, or the compromise agreed upon, after
16 making provisions for those expenditures, if any,
17 specified in subdivision (2), subsection (c), section six of
18 this article, in the same manner as in the cases tried
19 without a jury.

CHAPTER 2

(S. B. 444—By Senator Chafin)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing that a pending action based upon a personal injury does not abate or change in substance when the injured person dies as a result of such injury; and providing that another action may also be prosecuted for wrongful death.

Be it enacted by the Legislature of West Virginia:

That section eight, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-8. Personal injury action where injuries result in death.

1 Where an action is brought by a person injured for
2 damage caused by the wrongful act, neglect or default
3 of any person or corporation, and the person injured dies
4 as a result thereof, the action shall not abate by reason
5 of his or her death but, his or her death being suggested,
6 it may be revived in the name of his or her personal
7 representative, and the complaint shall be amended so
8 as to conform to an action under sections five and six
9 of this article, and the case proceeded with as if the
10 action had been brought under said sections.
11 Additionally a separate and distinct cause of action may
12 be brought, and if brought, shall be joined in the same
13 proceeding for damages incurred between the time of
14 injury and death where not otherwise provided for in
15 said sections five and six. In either case there shall be
16 but one recovery for each element of damages: *Provided,*
17 That nothing in this section shall be construed in
18 derogation of the provisions of section twelve of this
19 article.

CHAPTER 3

(Com. Sub. for H. B. 2030—By Delegates Love and R. Burk)

[Passed March 21, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen, relating to enacting the uniform enforcement of foreign judgments act; providing definitions; providing for procedures for filing of foreign judgment; providing for notice, execution and stay of proceedings; providing for determination of fees; and allowing alternative action.

Be it enacted by the Legislature of West Virginia:

That chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article fourteen, to read as follows:

ARTICLE 14. UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT.

§55-14-1. Definitions.

§55-14-2. Filing and status of foreign judgments.

§55-14-3. Notice of filing.

§55-14-4. Stay.

§55-14-5. Fees.

§55-14-6. Optional procedure.

§55-14-7. Uniformity of interpretation.

§55-14-8. Short title.

§55-14-1. Definitions.

- 1 In this article "foreign judgment" means any judg-
- 2 ment, decree or order of a court of the United States
- 3 or of any other court which is entitled to full faith and
- 4 credit in this state.

§55-14-2. Filing and status of foreign judgments.

- 1 A copy of any foreign judgment authenticated in
- 2 accordance with an act of Congress or the statutes of this
- 3 state may be filed in the office of the clerk of any circuit
- 4 court of this state. The clerk shall treat the foreign

5 judgment in the same manner as a judgment of any
6 circuit court of this state. A judgment so filed has the
7 same effect and is subject to the same procedures,
8 defenses and proceedings for reopening, vacating or
9 staying as a judgment of a circuit court of this state and
10 may be enforced or satisfied in like manner.

§55-14-3. Notice of filing.

1 (a) At the time of the filing of the foreign judgment,
2 the judgment creditor or his lawyer shall make and file
3 with the clerk of the circuit court an affidavit setting
4 forth the name and last known post-office address of the
5 judgment debtor and the judgment creditor.

6 (b) Promptly upon the filing of the foreign judgment
7 and the affidavit, the clerk shall mail notice of the filing
8 of the foreign judgment to the judgment debtor at the
9 address given and shall make a note of the mailing in
10 the docket. The notice shall include the name and post-
11 office address of the judgment creditor and the judg-
12 ment creditor's lawyer, if any, in this state. In addition,
13 the judgment creditor may mail a notice of the filing
14 of the judgment to the judgment debtor and may file
15 proof of mailing with the clerk. Lack of mailing notice
16 of filing by the clerk shall not affect the enforcement
17 proceedings if proof of mailing by the judgment creditor
18 has been filed.

19 (c) No execution or other process for enforcement of
20 a foreign judgment filed hereunder may issue until
21 thirty days after the date the judgment is filed.

§55-14-4. Stay.

1 (a) If the judgment debtor shows the circuit court that
2 an appeal from the foreign judgment is pending or will
3 be taken, or that a stay of execution has been granted,
4 the court shall stay enforcement of the foreign judgment
5 until the appeal is concluded, the time for appeal expires
6 or the stay of execution expires or is vacated, upon proof
7 that the judgment debtor has furnished the security for
8 the satisfaction of the judgment required by the state
9 in which it was rendered.

10 (b) If the judgment debtor shows the circuit court any

- 11 ground upon which enforcement of a judgment of any
- 12 court of this state would be stayed, the court shall stay
- 13 enforcement of the foreign judgment for an appropriate
- 14 period, upon requiring the same security for satisfaction
- 15 of the judgment which is required in this state.

§55-14-5. Fees.

- 1 Fees for filing, docketing, transcription or other
- 2 enforcement proceedings shall be as provided for in
- 3 section eleven, article one, chapter fifty-nine of this code.

§55-14-6. Optional procedure.

- 1 The right of a judgment creditor to bring an action
- 2 to enforce his judgment instead of proceeding under this
- 3 article remains unimpaired.

§55-14-7. Uniformity of interpretation.

- 1 This article shall be so interpreted and construed as
- 2 to effectuate its general purpose to make uniform the
- 3 law of those states which enact it.

§55-14-8. Short title.

- 1 This article may be cited as the "Uniform Enforce-
- 2 ment of Foreign Judgments Act."

CHAPTER 4

(Com. Sub. for H. B. 2710—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
by Request of the Executive)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article three of said chapter by adding thereto two new sections, designated sections one-a and one-b, relating to requiring rules related to the conduct of students at public schools or public educational institutions to follow the administrative procedures act; permitting agencies to file amendments to existing rules

and emergency amendments on a section by section basis and to allow the tax department to provide copies of tax rules, charge a fee and deposit such fees into the tax commissioner's office account.

Be it enacted by the Legislature of West Virginia:

That article one, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article three of said chapter be amended by adding thereto two new sections, designated sections one-a and one-b, all to read as follows:

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES.

Article

1. Definitions and Application of Chapter.
3. Rule Making.

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

§29A-1-3. Application of chapter; limitations.

1 (a) The provisions of this chapter do not apply in any
2 respect whatever to executive orders of the governor,
3 which orders to the extent otherwise lawful shall be
4 effective according to their terms: *Provided*, That the
5 executive orders shall be admitted to record in the state
6 register when and to the extent the governor deems
7 suitable and shall be included therein by the secretary
8 of state when tendered by the governor.

9 (b) Except as to requirements for filing in the state
10 register, and with the Legislature or its rule-making
11 review committee, provided in this chapter or other law,
12 the provisions of this chapter do not apply in any respect
13 whatever to the West Virginia board of probation and
14 parole, the public service commission, the board of
15 public works sitting as such and the West Virginia
16 board of regents: *Provided*, That rules of such agencies
17 shall be filed in the state register in the form prescribed
18 by this chapter and be effective no sooner than sixty
19 consecutive days after being so filed: *Provided, however*,
20 That the rules promulgated by the state colleges and
21 universities shall only be filed with the West Virginia
22 board of regents: *Provided further*, That such agencies

23 may promulgate emergency rules in conformity with
24 section fifteen, article three of this chapter.

25 (c) The provisions of this chapter do not apply to rules
26 relating to or contested cases involving the conduct of
27 inmates or other persons admitted to public institutions,
28 the open seasons and the bag, creel, size, age, weight and
29 sex limits with respect to the wildlife in this state, the
30 conduct of persons in military service or the receipt of
31 public assistance. Such rules shall be filed in the state
32 register in the form prescribed by this chapter and be
33 effective upon filing.

34 (d) Nothing herein shall be construed to affect, limit
35 or expand any express and specific exemption from this
36 chapter contained in any other statute relating to a
37 specific agency, but such exemptions shall be construed
38 and applied in accordance with the provisions of this
39 chapter to effectuate any limitations on such exemptions
40 contained in any such other statute.

ARTICLE 3. RULE MAKING.

§29A-3-1a. Filing proposed amendments to an existing rule.

§29A-3-1b. Rules of the tax department.

§29A-3-1a. Filing proposed amendments to an existing rule.

1 (a) Rules promulgated to amend existing rules may be
2 filed on a section by section basis without having to
3 refile in the state register all of the other sections of an
4 existing series numbered rule: *Provided*, That such
5 filing shall list, by proper citation, those sections, not
6 amended, which are directly affected by those sections
7 amended: *Provided, however*, That amendments so filed
8 shall be accompanied by a note of explanation as to the
9 effect of such amendment and its relation to the existing
10 rules.

11 (b) Rules promulgated to amend existing rules and
12 filed as an emergency rule may be filed on a section by
13 section basis without having to refile in the state
14 register all of the other sections of an existing series
15 numbered rule: *Provided*, That such filing shall list, by

16 proper citation, those sections not amended, which are
17 directly affected by those sections amended.

§29A-3-1b. Rules of the tax department.

1 Notwithstanding the provisions of section eight,
2 article two of this chapter, the tax commissioner may
3 reproduce the same in his state tax bulletin and may,
4 upon request, distribute copies of the proposed or
5 emergency rule after such proposed or emergency rule
6 has been filed in the state register and may charge a
7 reasonable fee in an amount set to recover his cost of
8 duplicating and mailing the same. The moneys so
9 received shall be deposited in the treasury to the credit
10 of the tax commissioner's account for printing, office
11 supplies or postage.

CHAPTER 5

(H. B. 2024—By Delegate Love)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article one,
chapter nineteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to rural resource division continued.

Be it enacted by the Legislature of West Virginia:

That section three-a, article one, chapter nineteen of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted to read as follows:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

**§19-1-3a. Rural resource division continued and
reestablished.**

1 After having conducted a performance and fiscal
2 audit through its joint committee on government
3 operations, pursuant to section nine, article ten, chapter
4 four of this code, the Legislature hereby finds and
5 declares that the rural resource division of the depart-
6 ment of agriculture should be continued and reestab-

lished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the rural resource division of the department of agriculture shall continue to exist until the first day of July, one thousand nine hundred ninety-one.

CHAPTER 6

(Com. Sub. for S. B. 68—By Senators Parker, Chernenko,
Brackenrich and Hawse)

[Passed April 7, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to ginseng; and providing criminal penalties for the illegal possession of uncertified green ginseng out of season.

Be it enacted by the Legislature of West Virginia:

That article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-a, to read as follows:

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-3a. Providing criminal penalties for the illegal possession of uncertified ginseng.

- 1 (a) The division of forestry of the department of
- 2 commerce, labor and environmental resources shall
- 3 have jurisdiction to regulate the digging, possession and
- 4 sale of native, wild or cultivated ginseng: *Provided*, That
- 5 the digging season for wild, native or cultivated ginseng
- 6 shall begin on the fifteenth day of August and end on
- 7 the thirtieth day of November of each year unless
- 8 otherwise authorized by the director. Ginseng dealers
- 9 shall: (1) Obtain a ginseng dealer's permit from the
- 10 director; (2) keep on forms provided by the director
- 11 accurate records for all ginseng acquired showing the
- 12 year harvested, the date acquired by the dealer, county

13 of origin, weight and whether wild or cultivated; and (3)
14 have all records and all acquired ginseng inspected by
15 the director at official ginseng inspection stations for the
16 purpose of certifying the dealer's records and issuing a
17 certificate documenting the inspection and the weight of
18 the ginseng. All ginseng dug in West Virginia must be
19 certified by the director before being transported or
20 shipped out of the state. No person shall have in his
21 possession uncertified green ginseng from the first day
22 of April through the fourteenth day of August.

23 (b) A person convicted of possession of uncertified
24 green ginseng from the first day of April through the
25 fourteenth day of August shall be punished as follows:

26 (A) *First offense conviction.*—Upon a first offense
27 conviction:

28 (i) When the value of the ginseng is two hundred
29 dollars or less, the defendant is guilty of a misdemeanor
30 and shall be fined not more than four hundred dollars.

31 (ii) When the value of the ginseng exceeds two
32 hundred dollars, the defendant is guilty of a misdemea-
33 nor and shall be fined not less than four hundred dollars,
34 nor more than six hundred dollars, and such fine may
35 not be suspended; or the defendant shall be imprisoned
36 in the county jail not more than thirty days; or both
37 fined and imprisoned.

38 (B) *Second offense conviction.*—Upon a second offense
39 conviction:

40 (i) When the value of the ginseng is two hundred
41 dollars or less, the defendant is guilty of a misdemeanor
42 and shall be fined not less than two hundred dollars nor
43 more than six hundred dollars, and such fine may not
44 be suspended; or the defendant shall be imprisoned in
45 the county jail not more than sixty days; or both fined
46 and imprisoned.

47 (ii) When the value of the ginseng exceeds two
48 hundred dollars, the defendant shall be guilty of a
49 misdemeanor and fined not less than six hundred
50 dollars, nor more than one thousand dollars, and shall
51 be imprisoned in the county jail for not less than sixty

52 days nor more than six months. At least thirty days shall
53 be spent in confinement and not subject to probation.

54 (C) *Third offense conviction.*—Upon a third or subse-
55 quent conviction, regardless of the value of the ginseng,
56 the defendant shall be guilty of a felony and shall be
57 fined not less than six hundred dollars nor more than
58 six thousand dollars, and shall be imprisoned in the
59 penitentiary not less than one year nor more than two
60 years, or, be confined in the county jail not more than
61 one year.

CHAPTER 7

(S. B. 567—By Senator Harman)

[Passed April 4, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article sixteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding serrated tussock weed to the definition of noxious weed seeds.

Be it enacted by the Legislature of West Virginia:

That section one, article sixteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 16. AGRICULTURAL AND FOREST SEEDS.

§19-16-1. Definitions.

1 When used in this article:

2 (a) "Commissioner" means the commissioner of agri-
3 culture of the state of West Virginia or his duly
4 authorized representatives;

5 (b) The term "person" shall include any individual,
6 partnership, corporation, company, society or
7 association;

8 (c) The term "agricultural seeds" shall include the
9 seeds of grass, forage, cereal, tobacco and fiber crops

10 and any other kinds of seeds commonly recognized
11 within this state as agricultural or field seeds and
12 mixtures of such seeds. Forest seeds shall include all
13 deciduous and coniferous trees and shrubs and
14 ornamentals;

15 (d) The term "vegetable seeds" includes the seeds of
16 those crops which are grown in gardens or on truck
17 farms and are generally known and sold under the name
18 of vegetable seeds in this state;

19 (e) The term "seed potato" shall refer to the Irish
20 potato (*Solanum tuberosum*);

21 (f) The term "weed seeds" shall include the seeds of
22 all plants generally recognized as weeds within this
23 state;

24 (g) Noxious weed seeds shall be divided into two
25 classes, "prohibited weed seeds" and "noxious weed
26 seeds," as defined in subdivisions (1) and (2) of this
27 subsection: *Provided*, That the commissioner of agricul-
28 ture may, through promulgation of regulations, add to
29 or subtract from the list of seeds included under either
30 definition whenever he finds that such additions or
31 subtractions are within the respective definitions;

32 (1) "Prohibited weed seeds" are the seeds of perennial
33 weeds which reproduce by seed, or spread by under-
34 ground roots or stems, and which when established are
35 highly destructive and difficult to control in this state
36 by ordinary cultural practice;

37 "Prohibited weed seeds" in this state are the seeds of
38 dodder (*Cuscuta* spp.), quack grass (*Agropyron repens*),
39 Johnson grass (*Sorghum halapense*), Canada thistle
40 (*Carduus arvensis*), perennial sow thistle (*Sonchus*
41 *arvensis*), serrated tussock (*Nassella trichotoma*);

42 (2) "Noxious weed seeds" are the seeds of such weeds
43 as are very objectionable in fields, lawns or gardens of
44 this state, but can be controlled by good cultural
45 practice. "Noxious weed seeds" in this state are the seeds
46 of wild onion (*Allium vineale*), hawk weed (*Hieracum*
47 spp.), buckhorn (*Plantago lanceolata*), English charlock
48 or wild mustard (*Brassica arvensis*), corn cockle

49 (Agrostemma gilthago), oxeye daisy (Chrysanthemum
50 leucanthemum), Indian mustard (Brassica juncea), star
51 thistle (Centurea solstitialis), wild carrot (Daucus
52 carota), horse nettle (Solanum carolinense), field pepper
53 grass (Lepidium compestre), wild morning glory
54 (Ipomea purpurea), bindweed (Convolvulus arvensis);

55 (h) The term "labeling" includes all labels and other
56 written, printed or graphic representation, in any form
57 whatsoever, accompanying and pertaining to any seed
58 whether in bulk or in containers, and includes invoices;

59 (i) The term "advertisement" means all representa-
60 tion, other than those on the label, disseminated in any
61 manner or by any means, relative to seed within the
62 scope of this article.

CHAPTER 8

(H. B. 2026—By Delegate Love)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of state soil conservation committee.

Be it enacted by the Legislature of West Virginia:

That section four, article twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 21A. SOIL CONSERVATION DISTRICTS.

§19-21A-4. State soil conservation committee.

1 (a) There is hereby established, to serve as an agency
2 of the state and to perform the functions conferred upon
3 it in this article, the state soil conservation committee.
4 The committee shall consist of seven members. The
5 following shall serve, ex officio, as members of the
6 committee: The director of the state cooperative exten-

7 sion service; the director of the state agricultural
8 experiment station; the director of the department of
9 natural resources; and the state commissioner of
10 agriculture, who shall be chairman of the committee.

11 The governor shall appoint as additional members of
12 the committee three representative citizens. The term of
13 members thus appointed shall be four years, except that
14 of the first members so appointed, one shall be ap-
15 pointed for a term of two years, one for a term of three
16 years, and one for a term of four years. In the event of
17 a vacancy, appointment shall be for the unexpired term.

18 The committee may invite the secretary of agriculture
19 of the United States of America to appoint one person
20 to serve with the committee as an advisory member.

21 The committee shall keep a record of its official
22 actions, shall adopt a seal, which seal shall be judicially
23 noticed, and may perform such acts, hold such public
24 hearings and promulgate such rules and regulations as
25 may be necessary for the execution of its functions under
26 this article.

27 (b) The state soil conservation committee may employ
28 an administrative officer and such technical experts and
29 such other agents and employees, permanent and
30 temporary, as it may require, and shall determine their
31 qualifications, duties and compensation. The committee
32 may call upon the attorney general of the state for such
33 legal services as it may require. It shall have authority
34 to delegate to its chairman, to one or more of its
35 members, or to one or more agents or employees, such
36 powers and duties as it may deem proper. The commit-
37 tee is empowered to secure necessary and suitable office
38 accommodations, and the necessary supplies and equip-
39 ment. Upon request of the committee, for the purpose
40 of carrying out any of its functions, the supervising
41 officer of any state agency, or of any state institution of
42 learning shall, insofar as may be possible, under
43 available appropriations, and having due regard to the
44 needs of the agency to which the request is directed,
45 assign or detail to the committee, members of the staff
46 or personnel of such agency or institution of learning,

47 and make such special reports, surveys or studies as the
48 committee may request.

49 (c) A member of the committee shall hold office so
50 long as he shall retain the office by virtue of which he
51 shall be serving on the committee. A majority of the
52 committee shall constitute a quorum, and the concur-
53 rence of a majority in any matter within their duties
54 shall be required for its determination. The chairman
55 and members of the committee shall receive no compen-
56 sation for their services on the committee, but shall be
57 entitled to expenses, including traveling expenses,
58 necessarily incurred in the discharge of their duties on
59 the committee. The committee shall provide for the
60 execution of surety bonds for all employees and officers
61 who shall be entrusted with funds or property; shall
62 provide for the keeping of a full and accurate public
63 record of all proceedings and of all resolutions, regula-
64 tions and orders issued or adopted; and shall provide for
65 an annual audit of the accounts of receipts and
66 disbursements.

67 (d) In addition to the duties and powers hereinafter
68 conferred upon the state soil conservation committee, it
69 shall have the following duties and powers:

70 (1) To offer such assistance as may be appropriate to
71 the supervisors of soil conservation districts, organized
72 as provided hereinafter, in the carrying out of any of
73 their powers and programs;

74 (2) To keep the supervisors of each of the several
75 districts, organized under the provisions of this article,
76 informed of the activities and experience of all other
77 districts organized hereunder, and to facilitate an
78 interchange of advice and experience between such
79 districts and cooperation between them;

80 (3) To coordinate the programs of the several soil
81 conservation districts organized hereunder so far as this
82 may be done by advice and consultation;

83 (4) To secure the cooperation and assistance of the
84 United States and any of its agencies, and of agencies

85 of this state, in the work of such districts;

86 (5) To disseminate information throughout the state
87 concerning the activities and programs of the soil
88 conservation districts organized hereunder, and to
89 encourage the formation of such districts in areas where
90 their organization is desirable;

91 (6) To accept and receive donations, gifts, contribu-
92 tions, grants and appropriations in money, services,
93 materials or otherwise, from the United States or any
94 of its agencies, from the state of West Virginia, or from
95 other sources, and to use or expend such money,
96 services, materials or other contributions in carrying out
97 the policy and provisions of this article, including the
98 right to allocate such money, services or materials in
99 part to the various soil conservation districts created by
100 this article in order to assist them in carrying on their
101 operations;

102 (7) To obtain options upon and to acquire by purchase,
103 exchange, lease, gift, grant, bequest, devise or other-
104 wise, any property, real or personal, or rights or
105 interests therein; to maintain, administer, operate and
106 improve any properties acquired, to receive and retain
107 income from such property and to expend such income
108 as required for operation, maintenance, administration
109 or improvement of such properties or in otherwise
110 carrying out the purposes and provisions of this article;
111 and to sell, lease or otherwise dispose of any of its
112 property or interests therein in furtherance of the
113 purposes and the provisions of this article. Money
114 received from the sale of land acquired in the small
115 watershed program shall be deposited in the special
116 account of the state soil conservation committee and
117 expended as herein provided.

118 After having conducted a performance and fiscal
119 audit through its joint committee on government
120 operations, pursuant to section nine, article ten, chapter
121 four of this code, the Legislature hereby finds and
122 declares that the state soil conservation committee
123 should be continued and reestablished. Accordingly,
124 notwithstanding the provisions of section four, article

- 125 ten, chapter four of this code, the state soil conservation
126 committee shall continue to exist until the first day of
127 July, one thousand nine hundred ninety-one.

CHAPTER 9

(H. B. 2587—By Delegates M. Burke and Minard)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine, ten, thirteen and thirteen-b, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to pari-mutuel system of wagering; authorization of licensee to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors; providing for daily license tax; providing pari-mutuel pools tax; procedure for payment of tax; alternate tax; credits; disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races; and establishment of a special revenue account, necessary costs of administration and promotion of the West Virginia Thoroughbred Development Fund being appropriated from said special revenue account, excess after appropriation being remitted to the West Virginia Thoroughbred Development Fund.

Be it enacted by the Legislature of West Virginia:

That sections nine, ten, thirteen and thirteen-b, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

- §19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.
- §19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.

§19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; nonrestricted purse supplements.

**PART VI. PARI-MUTUEL SYSTEM OF WAGERING AUTHORIZED;
COMMISSIONS DEDUCTED FROM PARI-MUTUEL POOLS.**

§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

1 (a) The pari-mutuel system of wagering upon the
2 results of any horse or dog race at any horse or dog race
3 meeting conducted or held by any licensee is hereby
4 authorized, if and only if such pari-mutuel wagering is
5 conducted by such licensee within the confines of such
6 licensee's horse racetrack or dog racetrack, and the
7 provisions of section one, article ten, chapter sixty-one
8 of this code, relating to gaming, shall not apply to the
9 pari-mutuel system of wagering in manner and form as
10 provided for in this article at any horse or dog race
11 meeting within this state where horse or dog racing
12 shall be permitted for any purse by any licensee. A
13 licensee shall permit or conduct only the pari-mutuel
14 system of wagering within the confines of such licensee's
15 racetrack at which any horse or dog race meeting is
16 conducted or held.

17 (b) A licensee is hereby expressly authorized to
18 deduct a commission from the pari-mutuel pools, as
19 follows:

20 (1) The commission deducted by any licensee from the
21 pari-mutuel pools on thoroughbred horse racing, except
22 from thoroughbred horse racing pari-mutuel pools
23 involving what is known as multiple betting in which
24 the winning pari-mutuel ticket or tickets are deter-
25 mined by a combination of two or more winning horses,
26 shall not exceed seventeen and one-fourth percent of the
27 total of such pari-mutuel pools for the day. Out of such
28 commission, as is mentioned in this subdivision, the
29 licensee (i) shall pay the pari-mutuel pools tax provided
30 for in subsection (b), section ten of this article, (ii) shall

31 make a deposit into a special fund to be established by
32 the licensee and to be used for the payment of regular
33 purses offered for thoroughbred racing by the licensee,
34 which deposits out of pari-mutuel pools for each day
35 during the months of January, February, March,
36 October, November and December shall be seven and
37 three hundred seventy-five one-thousandths percent of
38 such pari-mutuel pools, and which, out of pari-mutuel
39 pools for each day during all other months, shall be six
40 and eight hundred seventy-five one-thousandths percent
41 of such pari-mutuel pools, which shall take effect
42 beginning fiscal year one thousand nine hundred ninety,
43 (iii) shall, after allowance for the exclusion given by
44 subsection (b), section ten of this article, make a deposit
45 into a special fund to be established by the racing
46 commission and to be used for the payment of breeders,
47 awards and capital improvements as authorized by
48 section thirteen-b of this article, which deposits out of
49 pari-mutuel pools shall from the effective date of this
50 section and for fiscal year one thousand nine hundred
51 eighty-five, be four-tenths percent; for fiscal year one
52 thousand nine hundred eighty-six, be seven-tenths
53 percent; for fiscal year one thousand nine hundred
54 eighty-seven, be one percent; for fiscal year one
55 thousand nine hundred eighty-eight, be one and one-half
56 percent; and for fiscal year one thousand nine hundred
57 eighty-nine, and each year thereafter, be two percent of
58 such pools, and (iv) shall pay one tenth of one percent
59 of such pari-mutuel pools into the general fund of the
60 county commission of the county in which the racetrack
61 is located, except if within a municipality, then to such
62 municipal general fund. The remainder of the commis-
63 sion shall be retained by the licensee.

64 The commission deducted by any licensee from the
65 pari-mutuel pools on thoroughbred horse racing involv-
66 ing what is known as multiple betting in which the
67 winning pari-mutuel ticket or tickets are determined by
68 a combination of two winning horses shall not exceed
69 nineteen percent and by a combination of three or more
70 winning horses shall not exceed twenty-five percent of
71 the total of such pari-mutuel pools for the day. Out of
72 such commission, as is mentioned in this paragraph, the

73 licensee (i) shall pay the pari-mutuel pools tax provided
74 for in subsection (b), section ten of this article, (ii) shall
75 make a deposit into a special fund to be established by
76 the licensee and to be used for the payment of regular
77 purses offered for thoroughbred racing by the licensee,
78 which deposits out of pari-mutuel pools for each day
79 during the months of January, February, March,
80 October, November and December for pools involving a
81 combination of two winning horses shall be eight and
82 twenty-five one-hundredths percent and out of pari-
83 mutuel pools for each day during all other months shall
84 be seven and seventy-five one-hundredths percent of
85 such pari-mutuel pools; and involving a combination of
86 three or more winning horses for the months of January,
87 February, March, October, November and December
88 the deposits out of such fund shall be eleven and twenty-
89 five one-hundredths percent of such pari-mutuel pools;
90 and which, out of pari-mutuel pools for each day during
91 all other months, shall be ten and seventy-five one-
92 hundredths percent of such pari-mutuel pools, (iii) shall,
93 after allowance for the exclusion given by subsection (b),
94 section ten of this article, make a deposit into a special
95 fund to be established by the racing commission and to
96 be used for the payment of breeders' awards and capital
97 improvements as authorized by section thirteen-b of this
98 article, which deposits out of pari-mutuel pools shall
99 from the effective date of this section and for fiscal year
100 one thousand nine hundred eighty-five, be four-tenths
101 percent; for fiscal year one thousand nine hundred
102 eighty-six, be seven-tenths percent; for fiscal year one
103 thousand nine hundred eighty-seven, be one percent; for
104 fiscal year one thousand nine hundred eighty-eight, be
105 one and one-half percent; and for fiscal year one
106 thousand nine hundred eighty-nine, and each year
107 thereafter, be two percent of such pools, and (iv) shall
108 pay one tenth of one percent of such pari-mutuel pools
109 into the general fund of the county commission of the
110 county in which the racetrack is located, except if within
111 a municipality, then to such municipal general fund.
112 The remainder of the commission shall be retained by
113 the licensee.

114 The deposits into special fund established by the

115 racing commission to be used for payments of breeders'
116 awards and other expenses authorized by section
117 thirteen-b of this article shall be reduced by fifty
118 percent in the event the average daily pari-mutuel pool
119 for any calendar year is less than the average daily pari-
120 mutuel pool for the calendar year ended the thirty-first
121 day of December, one thousand nine hundred eighty-
122 three, in amount equal to eleven percent of the average
123 daily pari-mutuel pool for said calendar year ended the
124 thirty-first day of December, one thousand nine hundred
125 eighty-three. Of the amounts so reduced, fifty percent
126 shall be paid into the special purse fund established in
127 section nine-b of this article.

128 The commission deducted by the licensee under
129 subdivision (1), subsection (b) of this section may be
130 reduced only by mutual agreement between the licensee
131 and a majority of the trainers and horse owners licensed
132 by subsection (a), section two of this article or their
133 designated representative. Such reduction in licensee
134 commissions may be for a particular race, racing day
135 or days or for a horse race meeting. Fifty percent of
136 such reduction shall be retained by the licensee from the
137 amounts required to be paid into the special fund
138 established by the licensee under the provisions of
139 subdivision (1), subsection (b) of this section. The racing
140 commission shall promulgate such reasonable rules and
141 regulations as are necessary to implement the foregoing
142 provisions.

143 (2) The commission deducted by any licensee from the
144 pari-mutuel pools on harness racing shall not exceed
145 seventeen and one-half percent of the total of such pari-
146 mutuel pools for the day. Out of such commission the
147 licensee shall pay the pari-mutuel pools tax provided for
148 in subsection (c), section ten of this article, and shall pay
149 one tenth of one percent into the general fund of the
150 county commission of the county in which the racetrack
151 is located, except if within a municipality, then to such
152 municipal general fund. The remainder of the commis-
153 sion shall be retained by the licensee.

154 (3) The commission deducted by any licensee from the
155 pari-mutuel pools on dog racing, except from dog racing

156 pari-mutuel pools involving what is known as multiple
157 betting in which the winning pari-mutuel ticket or
158 tickets are determined by a combination of two or more
159 winning dogs, shall not exceed sixteen and thirty one-
160 hundredths percent of the total of all pari-mutuel pools
161 for the day. The commission deducted by any licensee
162 from the pari-mutuel pools on dog racing involving what
163 is known as multiple betting in which the winning pari-
164 mutuel ticket or tickets are determined by a combina-
165 tion of two winning dogs shall not exceed nineteen
166 percent, by a combination of three winning dogs shall
167 not exceed twenty percent, and by a combination of four
168 or more winning dogs shall not exceed twenty-one
169 percent of the total of such pari-mutuel pools for the day.
170 The foregoing commissions shall be in effect for the
171 fiscal years one thousand nine hundred ninety and one
172 thousand nine hundred ninety-one. Thereafter, the
173 commission shall be at the percentages in effect prior
174 to the effective date of this article unless the Legislature,
175 after review, determines otherwise. Out of such commis-
176 sions, the licensee shall pay the pari-mutuel pools tax
177 provided for in subsection (d), section ten of this article,
178 and one tenth of one percent of such pari-mutuel pools
179 into the general fund of the county commission of the
180 county in which the racetrack is located. In addition, out
181 of such commissions, if the racetrack is located within
182 a municipality, then the licensee shall also pay three
183 tenths of one percent of the pari-mutuel pools into the
184 general fund of the municipality; or, if the racetrack is
185 located outside of a municipality, then the licensee shall
186 also pay three tenths of one percent of the pari-mutuel
187 pools into the state road fund for use by the department
188 of highways in accordance with the provisions of this
189 subdivision (3). The remainder of the commission shall
190 be retained by the licensee.

191 For the purposes of this section, "municipality" shall
192 mean and include any Class I, Class II and Class III city
193 and any Class IV town or village, incorporated as a
194 municipal corporation under the laws of this state prior
195 to the first day of January, one thousand nine hundred
196 eighty-seven.

197 Each dog racing licensee, when required by the
198 provisions of this subdivision (3) to pay a percentage of
199 its commissions to the state road fund for use by the
200 department of highways, shall transmit the required
201 funds, in such manner and at such times as the racing
202 commission shall by procedural rule direct, to the state
203 treasurer for deposit in the state treasury to the credit
204 of the department of highways state road fund. All
205 funds collected and received in the state road fund
206 pursuant to the provisions of this subdivision shall be
207 used by the department of highways in accordance with
208 the provisions of article seventeen-a, chapter seventeen
209 of this code for the acquisition of right-of-way for, the
210 construction of, the reconstruction of and the improve-
211 ment or repair of any interstate or other highway,
212 secondary road, bridge and toll road in the state. If on
213 the first day of July, one thousand nine hundred eighty-
214 nine, any area encompassing a dog racetrack has
215 incorporated as a Class I, Class II or Class III city or
216 as a Class IV town or village, whereas such city, town
217 or village was not incorporated as such on the first day
218 of January, one thousand nine hundred eighty-seven,
219 then on and after the first day of July, one thousand nine
220 hundred eighty-nine, any balances in the state road fund
221 existing as a result of payments made under the
222 provisions of this subdivision may be used by the state
223 road fund for any purpose for which other moneys in
224 such fund may lawfully be used, and in lieu of further
225 payments to the state road fund, the licensee of a
226 racetrack which is located in such municipality shall
227 thereafter pay three tenths of one percent of the pari-
228 mutuel pools into the general fund of such municipality.
229 If no such incorporation occurs before the first day of
230 July, one thousand nine hundred eighty-nine, then
231 payments to the state road fund shall thereafter
232 continue as provided for under the provisions of this
233 subdivision.

234 A dog racing licensee, before deducting the commis-
235 sions authorized by this subdivision (3), shall give
236 written notification to the racing commission not less
237 than thirty days prior to any change in the percentage
238 rates for such commissions. The racing commission shall

239 prescribe blank forms for filing such notification. Such
240 notification shall disclose the following: (1) The revised
241 commissions to be deducted from the pari-mutuel pools
242 each day on win, place and show betting and on
243 different forms of multiple bettings; (2) the dates to be
244 included in such revised betting; (3) such other informa-
245 tion as may be required by the racing commission.

246 The licensee shall establish a special fund to be used
247 only for capital improvements or long-term debt
248 amortization or both: *Provided*, That any licensee,
249 heretofore licensed for a period of eight years prior to
250 the effective date of the amendment made to this section
251 during the regular session of the Legislature held in the
252 year one thousand nine hundred eighty-seven, shall
253 establish such special fund to be used only for capital
254 improvements or physical plant maintenance, or both,
255 at such licensee's licensed facility or at such licensee's
256 commonly owned racing facility located within this
257 state. Deposits made into such funds shall be in an
258 amount equal to twenty-five percent of the increased
259 rate total over and above the applicable rate in effect
260 as of the first day of January, one thousand nine
261 hundred eighty-seven, of the pari-mutuel pools for the
262 day. Any amount deposited into such funds must be
263 expended or liability therefor incurred within a period
264 of two years from the date of deposit. Any funds not so
265 expended shall forthwith be transferred into the state
266 general fund after expiration of the two-year period.

267 The licensee shall make a deposit into a special fund
268 established by the licensee and used for payment of
269 regular purses offered for dog racing, which deposits
270 out of the licensee's commissions for each day shall be
271 three and seventy-five one-hundredths percent
272 (3.75%) of the pari-mutuel pools.

273 The licensee shall further establish a special fund to
274 be used exclusively for marketing and promotion
275 programs; such funds shall be in an amount equal to five
276 percent over and above the applicable rates in effect as
277 of the first day of January, one thousand nine hundred
278 eighty-seven, of the total pari-mutuel pools for the day.

279 The racing commission shall prepare and transmit
280 annually to the governor and the Legislature a report
281 of the activities of the racing commission under this
282 subdivision (3). The report shall include a statement of:
283 The amount of commissions retained by licensees; the
284 amount of taxes paid to the state; the amounts paid to
285 municipalities, counties and the department of highways
286 dog racing fund; the amounts deposited by licensees into
287 special funds for capital improvements or long-term
288 debt amortization, and a certified statement of the
289 financial condition of any licensee depositing into such
290 fund; the amounts paid by licensees into special funds
291 and used for regular purses offered for dog racing; the
292 amounts paid by licensees into special funds and used
293 for marketing and promotion programs; and such other
294 information as the racing commission may deem
295 appropriate for review.

296 The racing commission shall report to the governor,
297 president of the Senate, speaker of the House, and the
298 Legislature, on or before the thirty-first day of De-
299 cember, one thousand nine hundred ninety-three, on the
300 effects of the amendments to this article by the acts of
301 the Legislature, regular session, one thousand nine
302 hundred eighty-seven, on dog racing licensees and pari-
303 mutuel taxation for use by the Legislature in review of
304 such amendments.

305 (c) In addition to any such commission, a licensee of
306 horse race or dog race meetings shall also be entitled
307 to retain the legitimate breakage, which shall be made
308 and calculated to the dime, and from such breakage, the
309 licensee of a horse race meeting (excluding dog race
310 meetings), shall deposit daily fifty percent of the total
311 of such breakage retained by the licensee into the special
312 fund created pursuant to the provisions of subdivision
313 (1), subsection (b) of this section for the payment of
314 regular purses.

315 (d) The director of audit, and any other auditors
316 employed by the racing commission who shall also be
317 certified public accountants or experienced public
318 accountants, shall have free access to the space or
319 enclosure where the pari-mutuel system of wagering is

320 conducted or calculated at any horse or dog race
321 meeting for the purpose of ascertaining whether or not
322 the licensee is deducting and retaining only a commis-
323 sion as provided in this section and is otherwise
324 complying with the provisions of this section. They shall
325 also, for the same purposes only, have full and free
326 access to all records and papers pertaining to such pari-
327 mutuel system of wagering, and shall report to the
328 racing commission in writing, under oath, whether or
329 not the licensee has deducted and retained any commis-
330 sion in excess of that permitted under the provisions of
331 this section or has otherwise failed to comply with the
332 provisions of this section.

333 (e) No licensee shall permit or allow any individual
334 under the age of eighteen years to wager at any horse
335 or dog racetrack, knowing or having reason to believe
336 that such individual is under the age of eighteen years.

337 (f) Notwithstanding the foregoing provisions of
338 subdivision (1), subsection (b) of this section, to the
339 contrary, a thoroughbred licensee qualifying for and
340 paying the alternate reduced tax on pari-mutuel pools
341 provided in section ten of this article shall distribute the
342 commission authorized to be deducted by subdivision (1),
343 subsection (b), section nine of this article as follows:
344 (i) The licensee shall pay the alternate reduced tax
345 provided in section ten of this article; (ii) shall pay one
346 tenth of one percent of such pari-mutuel pools into the
347 general fund of the county commission of the county in
348 which the racetrack is located, except if within a
349 municipality, then to such municipal general fund;
350 (iii) one half of the remainder of the commission shall
351 be paid into the special fund established by the licensee
352 and to be used for the payment of regular purses offered
353 for thoroughbred racing by the licensee; and (iv) the
354 amount remaining after the payments required above
355 shall be retained by the licensee.

356 (g) Each kennel which provides or races dogs owned
357 or leased by others shall furnish to the commission a
358 surety bond in an amount to be determined by the
359 commission to secure the payment to the owners or
360 lessees of such dogs the portion of any purse owed to

361 such owner or lessee.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

1 (a) Any racing association conducting thoroughbred
2 racing at any horse racetrack in this state shall pay each
3 day upon which horse races are run a daily license tax
4 of two hundred fifty dollars. Any racing association
5 conducting harness racing at any horse racetrack in this
6 state shall pay each day upon which horse races are run
7 a daily license tax of one hundred fifty dollars. Any
8 racing association conducting dog races shall pay each
9 day upon which dog races are run a daily license tax
10 of one hundred fifty dollars. In the event thoroughbred
11 racing, harness racing, dog racing, or any combination
12 of the foregoing are conducted on the same day at the
13 same racetrack by the same racing association, only one
14 daily license tax in the amount of two hundred fifty
15 dollars shall be paid for that day. Any such daily license
16 tax shall not apply to any local, county or state fair,
17 horse show or agricultural or livestock exposition at
18 which horse racing is conducted for not more than six
19 days.

20 (b) Any racing association licensed by the racing
21 commission to conduct thoroughbred racing and permit-
22 ting and conducting pari-mutuel wagering under the
23 provisions of this article shall, in addition to the
24 aforementioned daily license tax, pay to the racing
25 commission, from the commission deducted each day by
26 such licensee from the pari-mutuel pools on tho-
27 roughbred racing a tax calculated on the total daily
28 contribution of all such pari-mutuel pools conducted or
29 made at any and every thoroughbred race meeting of
30 the licensee licensed under the provisions of this article,
31 which tax, on the pari-mutuel pools conducted or made
32 each day during the months of January, February,
33 March, October, November and December shall from
34 the effective date of this section and for fiscal year one
35 thousand nine hundred eighty-five, be calculated at two
36 and six-tenths percent; for fiscal year one thousand nine
37 hundred eighty-six, be calculated at two and three-
38 tenths percent; for fiscal year one thousand nine

39 hundred eighty-seven, be calculated at two percent of
40 such pool; for fiscal year one thousand nine hundred
41 eighty-eight, be calculated at one and one-half percent;
42 for fiscal year one thousand nine hundred eighty-nine,
43 be calculated at one percent of such pool; for fiscal year
44 one thousand nine hundred ninety, seven-tenths of one
45 percent, and for fiscal year one thousand nine hundred
46 ninety-one and each fiscal year thereafter be calculated
47 at four-tenths of one percent of such pool; and, on the
48 pari-mutuel pools conducted or made each day during
49 all other months, shall from the effective date of this
50 section and for fiscal year one thousand nine hundred
51 eighty-five, be calculated at three and six-tenths
52 percent; for fiscal year one thousand nine hundred
53 eighty-six, be calculated at three and three-tenths
54 percent; for fiscal year one thousand nine hundred
55 eighty-seven, be calculated at three percent of such pool;
56 for fiscal year one thousand nine hundred eighty-eight,
57 be calculated at two and one-half percent; for fiscal year
58 one thousand nine hundred eighty-nine, be calculated at
59 two percent of such pool; for fiscal year one thousand
60 nine hundred ninety, be calculated at one and seven-
61 tenths percent of such pool; and for fiscal year one
62 thousand nine hundred ninety-one and each fiscal year
63 thereafter, be calculated at one and four-tenths percent
64 of such pool: *Provided*, That out of the amount realized
65 from the three-tenths of one percent decrease in such tax
66 effective for fiscal year one thousand nine hundred
67 ninety-one and thereafter, which decrease correspond-
68 ingly increases the amount of commission retained by
69 the licensee, the licensee shall annually expend or
70 dedicate (i) one-half of such realized amount for capital
71 improvements in its barn area at the track, subject to
72 the racing commission's prior approval of the plans for
73 such improvements, and (ii) the remaining one-half of
74 such realized amount for capital improvements as the
75 licensee may determine appropriate at the track. The
76 term capital improvement shall be as defined by the
77 Internal Revenue Code: *Provided, however*, That any
78 such racing association operating a horse racetrack in
79 this state having an average daily pari-mutuel pool on
80 horse racing of two hundred eighty thousand dollars or

81 less per day for the race meetings of the preceding
82 calendar year shall, in lieu of payment of the pari-
83 mutuel pool tax, calculated as hereinbefore in this
84 subsection provided, be permitted to conduct pari-
85 mutuel wagering at such horse racetrack on the basis
86 of a daily pari-mutuel pool tax fixed as follows: On the
87 daily pari-mutuel pool not exceeding three hundred
88 thousand dollars the daily pari-mutuel pool tax shall be
89 one thousand dollars plus the otherwise applicable
90 percentage rate imposed by this subsection of the daily
91 pari-mutuel pool, if any, in excess of three hundred
92 thousand dollars: *Provided further*, That upon the
93 effective date of the reduction of such daily pari-mutuel
94 pool tax to one thousand dollars from the former two
95 thousand dollars, the association or licensee shall daily
96 deposit five hundred dollars into the special fund for
97 regular purses established by subdivision one, subsection
98 (b), section nine of this article: *And provided*
99 *further*, That if an association or licensee qualifying for
100 the foregoing alternate tax conducts more than one
101 racing performance, each consisting of up to ten races
102 in a calendar day, such association or licensee shall pay
103 both the daily license tax imposed in subsection (a) and
104 the foregoing alternate tax for each such performance:
105 *And provided further*, That a licensee qualifying for the
106 foregoing alternate tax is excluded from participation
107 in the fund established by section thirteen-b of this
108 article.

109 (c) Any racing association licensed by the racing
110 commission to conduct harness racing and permitting
111 and conducting pari-mutuel wagering under the provisions
112 of this article shall, in addition to the aforementioned
113 daily license tax, pay to the racing commission,
114 from the commission deducted each day by the licensee
115 from the pari-mutuel pools on harness racing, as a tax,
116 three percent of the first one hundred thousand dollars
117 wagered, or any part thereof; four percent of the next
118 one hundred fifty thousand dollars; and five and three-
119 fourths percent of all over that amount wagered each
120 day in all such pari-mutuel pools conducted or made at
121 any and every harness race meeting of the licensee
122 licensed under the provisions of this article.

123 (d) Any racing association licensed by the racing
124 commission to conduct dog racing and permitting and
125 conducting pari-mutuel wagering under the provisions
126 of this article shall, in addition to the aforementioned
127 daily license tax, pay to the racing commission, from the
128 commission deducted each day by such licensee from the
129 pari-mutuel pools on dog racing, as a tax, four percent
130 of the first fifty thousand dollars or any part thereof of
131 such pari-mutuel pools, five percent of the next fifty
132 thousand dollars of such pari-mutuel pools, six percent
133 of the next one hundred thousand dollars of such pari-
134 mutuel pools, seven percent of the next one hundred fifty
135 thousand dollars of such pari-mutuel pools, and eight
136 percent of all over three hundred fifty thousand dollars
137 wagered each day: *Provided*, That the licensee shall
138 deduct daily from the pari-mutuel tax an amount equal
139 to one-tenth of one percent of the daily pari-mutuel pools
140 in dog racing in fiscal year one thousand nine hundred
141 ninety; fifteen hundredths of one percent in fiscal year one
142 thousand nine hundred ninety-one; two-tenths of one
143 percent in fiscal year one thousand nine hundred ninety-
144 two; one quarter of one percent in fiscal year one
145 thousand nine hundred ninety-three; and three-tenths of
146 one percent in fiscal year one thousand nine hundred
147 ninety-four and every fiscal year thereafter. The
148 amounts so deducted shall be paid to the racing
149 commission to be deposited by the racing commission in
150 a banking institution of its choice in a special account
151 to be known as "West Virginia Racing Commission-
152 Special Account-West Virginia Greyhound Breeding
153 Development Fund." Such moneys shall be expended by
154 the racing commission exclusively for purses for stake
155 races involving West Virginia whelped dogs, under
156 rules and regulations promulgated by the racing
157 commission.

158 (e) All daily license and pari-mutuel pools tax pay-
159 ments required under the provisions of this section shall
160 be made to the racing commission or its agent after the
161 last race of each day of each horse or dog race meeting,
162 and the pari-mutuel pools tax payments shall be made
163 from all contributions to all pari-mutuel pools to each
164 and every race of the day.

165 (f) Every association or licensee subject to the provi-
166 sions of this article, including the changed provisions of
167 sections nine and ten hereof, shall annually submit to the
168 racing commission and the Legislature financial state-
169 ments, including a balance sheet, income statement,
170 statement of change in financial position and an audit
171 of any electronic data system used for pari-mutuel
172 tickets and betting, prepared in accordance with
173 generally accepted auditing standards, as certified by
174 an experienced public accountant or a certified public
175 accountant.

**§19-23-13. Disposition of funds for payment of outstand-
ing and unredeemed pari-mutuel tickets;
publication of notice; irredeemable tickets;
stake races for dog tracks.**

1 (a) All moneys held by any licensee for the payment
2 of outstanding and unredeemed pari-mutuel tickets, if
3 not claimed within ninety days after the close of the
4 horse or dog race meeting in connection with which the
5 tickets were issued, shall be turned over by the licensee
6 to the racing commission within fifteen days after the
7 expiration of such ninety-day period, and the licensee
8 shall give such information as the racing commission
9 may require concerning such outstanding and unre-
10 deemed tickets. All such moneys shall be deposited by
11 the racing commission in a banking institution of its
12 choice in a special account to be known as "West
13 Virginia Racing Commission Special Account—Unre-
14 deemed Pari-Mutuel Tickets." Notice of the amount,
15 date and place of such deposit shall be given by the
16 racing commission, in writing, to the state treasurer.
17 The racing commission shall then cause to be published
18 a notice to the holders of such outstanding and unre-
19 deemed pari-mutuel tickets, notifying them to present
20 such tickets for payment at the principal office of the
21 racing commission within ninety days from the date of
22 the publication of such notice. Such notice shall be
23 published within fifteen days following the receipt of
24 said moneys by the commission from the licensee as a
25 Class I legal advertisement in compliance with the
26 provisions of article three, chapter fifty-nine of this code,

27 and the publication area for such publication shall be
28 the county in which such horse or dog race meeting was
29 held.

30 (b) Any such pari-mutuel tickets that shall not be
31 presented for payment within ninety days from the date
32 of the publication of the notice shall thereafter be
33 irredeemable, and the moneys theretofore held for the
34 redemption of such pari-mutuel tickets shall become the
35 property of the racing commission, and shall be
36 expended as follows:

37 (1) To the owner of the winning horse in any horse
38 race at a horse race meeting held or conducted by any
39 licensee provided that the owner of such horse is at the
40 time of such horse race a bona fide resident of this state,
41 a sum equal to ten percent of the purse won by such
42 horse. The commission may require proof that the owner
43 was, at the time of the race, a bona fide resident of this
44 state. Upon proof by the owner that he filed a personal
45 income tax return in this state for the previous two
46 years and that he owned real or personal property in
47 this state and paid taxes in this state on said property
48 for the two previous years, he shall be presumed to be
49 a bona fide resident of this state; and

50 (2) To the breeder (that is, the owner of the mare) of
51 the winning horse in any horse race at a horse race
52 meeting held or conducted by any licensee provided that
53 the mare foaled in this state, a sum equal to ten percent
54 of the purse won by such horse; and

55 (3) To the owner of the stallion which sired the
56 winning horse in any horse race at a horse race meeting
57 held or conducted by any licensee provided that the
58 mare which foaled such winning horse was served by
59 a stallion standing and registered in this state, a sum
60 equal to ten percent of the purse won by such horse; and

61 (4) When the moneys in the special account, known as
62 the "West Virginia Racing Commission Special Ac-
63 count—Unredeemed Pari-Mutuel Tickets" will more
64 than satisfy the requirements of subdivisions (1), (2) and
65 (3), subsection (b) of this section, the West Virginia
66 racing commission shall have the authority to expend

67 the excess moneys from unredeemed horse racing pari-
68 mutuel tickets as purse money in any race conditioned
69 exclusively for West Virginia bred or sired horses, and
70 to expend the excess moneys from unredeemed dog
71 racing pari-mutuel tickets in supplementing purses and
72 establishing stake races and dog racing handicaps at the
73 dog tracks: *Provided*, That beginning with the fiscal
74 year one thousand nine hundred ninety, and subject to
75 the availability of funds, the commission shall, after the
76 requirements of subdivisions (1), (2) and (3), subsection
77 (b) of this section have been satisfied, transfer annually
78 three hundred thousand dollars of such excess moneys
79 into a separate account to be used for promotional
80 activities and purses for stake races for the West
81 Virginia Thoroughbred Breeders Classic, which shall
82 give equal consideration to all horses qualifying under
83 the West Virginia breeders program for each stake race,
84 based solely on the horses' sex, age and earnings.

85 Beginning with the fiscal year one thousand nine
86 hundred eighty-nine, and in each fiscal year thereafter,
87 the commission shall submit to the legislative auditor a
88 quarterly report and accounting of the income, expen-
89 ditures and unobligated balance in the special account
90 created by this section known as the "West Virginia
91 Racing Commission Special Account—Unredeemed
92 Pari-Mutuel Tickets."

93 (c) Nothing contained in this article shall prohibit one
94 person from qualifying for all or more than one of the
95 aforesaid awards, or for awards under section thirteen-
96 b of this article.

97 (d) The cost of publication of the notice provided for
98 in this section shall be paid from the funds in the hands
99 of the state treasurer collected from the pari-mutuel
100 pools tax provided for in section ten of this article, when
101 not otherwise provided in the budget; but no such costs
102 shall be paid unless an itemized account thereof, under
103 oath, be first filed with the state auditor.

**§19-23-13b. West Virginia thoroughbred development
fund; distribution; restricted races; non-
restricted purse supplements.**

1 The racing commission shall deposit moneys required
2 to be withheld by an association or licensee in subsection
3 (b), section nine of this article in a banking institution
4 of its choice in a special account to be known as "West
5 Virginia Racing Commission Special Account—West
6 Virginia Thoroughbred Development Fund." Notice of
7 the amount, date and place of such deposit shall be given
8 by the racing commission, in writing, to the state
9 treasurer. The purpose of the fund is to promote better
10 breeding and racing of thoroughbred horses in the state
11 through awards and purses for accredited breed-
12 ers/raisers, sire owners and thoroughbred race horse
13 owners. A further objective of the fund is to aid in the
14 rejuvenation and development of the present horse
15 tracks now operating in West Virginia for capital
16 improvements, operations or increased purses between
17 the first day of July, one thousand nine hundred eighty-
18 four, and the thirty-first day of October, one thousand
19 nine hundred ninety-two: *Provided*, That five percent of
20 the deposits required to be withheld by an association
21 or licensee in subsection (b), section nine of this article
22 shall be placed in a special revenue account hereby
23 created in the state treasury called the "administration
24 and promotion account." The racing commission is
25 authorized to expend the moneys deposited in the
26 administration and promotion account at such times and
27 in such amounts as the commission determines to be
28 necessary for purposes of administering and promoting
29 the thoroughbred development program: *Provided*,
30 *however*, That during any fiscal year in which the
31 commission anticipates spending any money from such
32 account, the commission shall submit to the executive
33 department during the budget preparation period prior
34 to the Legislature convening before that fiscal year for
35 inclusion in the executive budget document and budget
36 bill, the recommended expenditures, as well as requests
37 of appropriations for the purpose of administration and
38 promotion of the program. The commission shall make
39 an annual report to the Legislature on the status of the
40 administration and promotion account, including the
41 previous year's expenditures and projected expenditures
42 for the next year.

43 The fund shall be established forthwith and operate
44 on an annual basis.

45 (a) Funds will be expended for awards and purses in
46 the following manner:

47 (i) Fifteen percent of the fund shall be available for
48 distribution for events taking place between the first
49 day of July, one thousand nine hundred eighty-four, and
50 the thirty-first day of December, one thousand nine
51 hundred eighty-five;

52 (ii) Fifty percent of the fund shall be available for
53 distribution for events taking place between the first
54 day of January, one thousand nine hundred eighty-six,
55 and the thirty-first day of December, one thousand nine
56 hundred eighty-six;

57 (iii) Seventy-five percent of the fund shall be available
58 for distribution for events taking place between the first
59 day of January, one thousand nine hundred eighty-
60 seven, and the thirty-first day of December, one
61 thousand nine hundred eighty-seven;

62 (iv) One hundred percent of the fund shall be avail-
63 able thereafter.

64 (b) Awards and purses will be distributed as follows:

65 (i) The breeders/raisers of accredited thoroughbred
66 horses that earn a purse at any West Virginia meet will
67 receive a bonus award calculated at the end of the year
68 as a percentage of the fund dedicated to the breed-
69 ers/raisers, which shall be sixty percent of the fund
70 available for distribution in any one year. The total
71 amount available for the breeders/raisers' awards shall
72 be distributed according to the ratio of purses earned
73 by an accredited race horse to the total amount earned
74 in such races by all accredited race horses for that year
75 as a percentage of the fund dedicated to the breed-
76 ers/raisers. However, no breeder/raiser may receive
77 from the fund dedicated to breeders/raisers' awards an
78 amount in excess of the earnings of the accredited horse
79 at West Virginia meets. In addition, should a horse's
80 breeder and raiser qualify for the same award on the
81 same horse, they will each be awarded one half of the

82 proceeds. Of the funds available for distribution in any
83 one year to breeders/raisers, neither the breeders as a
84 group nor the raisers as a group, shall, until January
85 first, one thousand nine hundred ninety-four, qualify for
86 more than sixty and one-tenth percent of such funds.

87 (ii) The owner of a West Virginia sire of an accredited
88 thoroughbred horse that earns a purse in any race at
89 a West Virginia meet will receive a bonus award
90 calculated at the end of the year as a percentage of the
91 fund dedicated to sire owners, which shall be fifteen
92 percent of the fund available for distribution in any one
93 year. The total amount available for the sire owners'
94 awards shall be distributed according to the ratio purses
95 earned by the progeny of accredited West Virginia
96 stallions in such races for a particular stallion to the
97 total purses earned by the progeny of all accredited
98 West Virginia stallions in such races. However, no sire
99 owner may receive from the fund dedicated to sire
100 owners an amount in excess of thirty percent of the
101 accredited earnings for each sire.

102 (iii) The owner of an accredited thoroughbred horse
103 that earns a purse in any race at a West Virginia meet
104 will receive a restricted purse supplement award
105 calculated at the end of the year, which shall be twenty-
106 five percent of the fund available for distribution in any
107 one year, based on the ratio of the earnings in such races
108 of a particular race horse to the total amount earned by
109 all accredited race horses in such races during that year
110 as a percentage of the fund dedicated to purse supple-
111 ments. However, the owners may not receive from the
112 fund dedicated to purse supplements an amount in
113 excess of forty percent of the total accredited earnings
114 for each accredited race horse.

115 (iv) In no event shall purses earned at a meet held at
116 a track which did not make a contribution to the
117 thoroughbred development fund out of the daily pool on
118 the day the meet was held qualify or count toward
119 eligibility for an award under this section.

120 (v) Any balance in the breeders/raisers, sire owners
121 and purse supplement funds after yearly distributions

122 shall revert back into the general account of the fund
123 for distribution in the next year.

124 Distribution shall be made on the fifteenth of each
125 February for the preceding year's achievements.

126 (c) The remainder, if any, of the fund that is not
127 available for distribution in the above program in any
128 one year is reserved for regular purses, marketing
129 expenses and for capital improvements in the amounts
130 and under the conditions provided hereinafter. Fifty
131 percent of such remainder shall be reserved for
132 payments into the regular purse fund established in
133 subsection (b), section nine of this article. Up to five
134 hundred thousand dollars per year shall be available for
135 (1) capital improvements at the eligible licensed horse
136 racing tracks in the state, and (2) marketing and
137 advertising programs above and beyond two hundred
138 fifty thousand dollars for the eligible licensed horse
139 racing tracks in the state: *Provided*, That moneys shall
140 be expended for capital improvements or marketing and
141 advertising purposes as described above only in accord
142 with a plan filed with and receiving the prior approval
143 of the racing commission, and on a basis of fifty percent
144 participation by the licensee and fifty percent partici-
145 pation by moneys from fund, in the total cost of
146 approved projects: *Provided, however*, That funds
147 approved for one track may not be used at another track
148 unless the first track ceases to operate or is viewed by
149 the commission as unworthy of additional investment
150 due to financial or ethical reasons.

151 (d) Each pari-mutuel thoroughbred horse track shall
152 provide at least the following restricted races in
153 accordance with the following time schedules:

154 (i) July first, one thousand nine hundred eighty-four,
155 to December thirty-first, one thousand nine hundred
156 eighty-four—one restricted race per eight racing days;

157 (ii) January first, one thousand nine hundred eighty-
158 five, to December thirty-first, one thousand nine
159 hundred eighty-five—one restricted race per seven
160 racing days;

- 161 (iii) January first, one thousand nine hundred eighty-
162 six, to December thirty-first, one thousand nine hundred
163 eighty-six—one restricted race per six racing days;
- 164 (iv) January first, one thousand nine hundred eighty-
165 seven, to December thirty-first, one thousand nine
166 hundred eighty-seven—one restricted race per five
167 racing days;
- 168 (v) January first, one thousand nine hundred eighty-
169 eight, to December thirty-first, one thousand nine
170 hundred eighty-eight—one restricted race per four
171 racing days;
- 172 (vi) January first, one thousand nine hundred eighty-
173 nine, to December thirty-first, one thousand nine
174 hundred eighty-nine—one restricted race per three
175 racing days; and thereafter. Restricted races shall be
176 funded by each racing association from moneys placed
177 in the general purse fund. The purses shall be twenty
178 percent larger than the purses for similar type races at
179 each track. The racing schedules, purse amounts and
180 types of races are subject to the approval of the West
181 Virginia racing commission.
- 182 (e) No association or licensee qualifying for the
183 alternate tax provision of subsection (b), section ten of
184 this article shall be eligible for participation in any of
185 the provisions of this section.

CHAPTER 10

(Com. Sub. for H. B. 2180—By Mr. Speaker, Mr. Chambers,
and Delegate R. Burk)

[Passed April 10, 1989; in effect from passage. Approved by the Governor.]

AN ACT making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the constitution.

Be it enacted by the Legislature of West Virginia:

Title

- I. General provisions.
- II. Appropriations.
- III. Administration.

TITLE I—GENERAL PROVISIONS.

- §1. General policy.
- §2. Definitions.
- §3. Classification of appropriations.
- §4. Method of expenditure.
- §5. Maximum expenditures.

1 **Section 1. General policy.**—The purpose of this bill
2 is to appropriate money necessary for the economical
3 and efficient discharge of the duties and responsibilities
4 of the state and its agencies during the fiscal year one
5 thousand nine hundred ninety.

1 **Sec. 2. Definitions.**—For the purpose of this bill:

2 “Governor” shall mean the governor of the state of
3 West Virginia.

4 “Code” shall mean the code of West Virginia, one
5 thousand nine hundred thirty-one, as amended.

6 “Spending unit” shall mean the department, agency or
7 institution to which an appropriation is made.

8 The “fiscal year one thousand nine hundred ninety”
9 shall mean the period from July first, one thousand nine
10 hundred eighty-nine, through June thirtieth, one
11 thousand nine hundred ninety.

12 “From collections” shall mean that part of the total
13 appropriation which must be collected by the spending
14 unit to be available for expenditure. If the authorized
15 amount of collections is not collected, the total appropri-
16 ation for the spending unit shall be reduced automat-
17 ically by the amount of the deficiency in the collections.
18 If the amount collected exceeds the amount designated
19 “from collections,” the excess shall be set aside in a
20 special surplus fund and may be expended for the
21 purpose of the spending unit as provided by article two,
22 chapter five-a of the code.

1 **Sec. 3. Classification of appropriations.**—An ap-
2 propriation for:

3 “Personal services” shall mean salaries, wages and
4 other compensation paid to full-time, part-time and
5 temporary employees of the spending unit but shall not
6 include fees or contractual payments paid to consultants
7 or to independent contractors engaged by the spending
8 unit.

9 From appropriations made to the spending units of
10 state government, upon approval of the governor, there
11 may be transferred to a special account an amount
12 sufficient to match federal funds under any federal act.

13 Unless otherwise specified, appropriations for per-
14 sonal services shall include salaries of heads of spending
15 units.

16 “Annual increment” shall mean funds appropriated
17 for “eligible employees” and shall be disbursed only in
18 accordance with article five, chapter five of the code.

19 Funds appropriated for “annual increment” shall be
20 transferred to “personal services” or other designated
21 items only as required.

22 “Employee benefits” shall mean social security
23 matching, workers’ compensation, unemployment com-
24 pensation, pension and retirement contributions, public
25 employees insurance matching or any other benefit
26 normally paid by the employer as a direct cost of
27 employment. Should the appropriation be insufficient to
28 cover such costs, the remainder of such cost shall be paid
29 by each spending unit from its “personal services” line
30 item or its “unclassified” line item. Each spending unit
31 is hereby authorized and required to make such
32 payments.

33 “Current expenses” shall mean operating costs other
34 than personal services and shall not include equipment,
35 repairs and alterations, buildings or lands.

36 Each spending unit shall be responsible for all
37 contributions, payments or other costs related to
38 coverage and claims of its employees for unemployment
39 compensation. Such expenditures shall be considered a
40 current expense.

41 Each spending unit shall be responsible for and
42 charged monthly for all postage meter service and shall
43 reimburse the appropriate revolving fund monthly for
44 all such amounts. Such expenditures shall be considered
45 a current expense.

46 "Equipment" shall mean equipment items which have
47 an appreciable and calculable period of usefulness in
48 excess of one year.

49 "Repairs and alterations" shall mean routine mainte-
50 nance and repairs to structures and minor improve-
51 ments to property which do not increase the capital
52 assets.

53 "Buildings" shall include new construction and major
54 alteration of existing structures and the improvement of
55 lands and shall include shelter, support, storage,
56 protection or the improvement of a natural condition.

57 "Lands" shall mean the purchase of real property or
58 interest in real property.

59 "Capital outlay" shall mean and include buildings,
60 lands or buildings and lands, with such category or item
61 of appropriation to remain in effect as provided by
62 section twelve, article three, chapter twelve of the code.

63 Appropriations classified in any of the above catego-
64 ries shall be expended only for the purposes as defined
65 above and only for the spending units herein designated:
66 *Provided*, That the secretary of each department shall
67 have the authority to transfer within the department
68 those funds appropriated to the various agencies of the
69 department: *Provided, however*, That no more than
70 twenty-five percent of the funds appropriated to any one
71 agency or board may be transferred to other agencies
72 or boards within the department: *Provided, further*,
73 That no funds may be transferred from a special
74 revenue account, dedicated account, capital expenditure
75 account or any other account or funds specifically
76 exempted by the Legislature from transfer, except that
77 the use of appropriations from the state road fund
78 transferred to the office of the secretary of the depart-
79 ment of transportation is not a use other than the

80 purpose for which such funds were dedicated and is
 81 permitted: *And, provided, further,* That if the Legisla-
 82 ture by subsequent enactment consolidates agencies,
 83 boards or functions, the secretary may transfer the
 84 funds formerly appropriated to such agency, board or
 85 function in order to implement such consideration.

86 Appropriations otherwise classified shall be expended
 87 only where the distribution of expenditures for different
 88 purposes cannot well be determined in advance or it is
 89 necessary or desirable to permit the spending unit the
 90 freedom to spend an appropriation for more than one of
 91 the above classifications.

1 **Sec. 4. Method of expenditure.**—Money approp-
 2 riated by this bill, unless otherwise specifically directed,
 3 shall be appropriated and expended according to the
 4 provisions of article three, chapter twelve of the code or
 5 according to any law detailing a procedure specifically
 6 limiting that article.

1 **Sec. 5. Maximum expenditures.**—No authority or
 2 requirement of law shall be interpreted as requiring or
 3 permitting an expenditure in excess of the appropria-
 4 tions set out in this bill.

TITLE II—APPROPRIATIONS.

§1. Appropriations from general revenue.

§2. Appropriations of federal funds.

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Education and State Employees Grievance Board—Acct. No. 6015	62
Ethics Commission—Acct. No. 6155	64
Public Employees Insurance Agency—Acct. No. 6150	63
Public Employees Retirement System—Acct. No. 6140	63
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Library Commission—Acct. No. 3500	75
Marshall University—Medical School—Acct. No. 2840	74
School of Osteopathic Medicine—Acct. No. 2810	73
West Virginia University—Schools of Health Sciences—Acct. No. 2850	74
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Division of Natural Resources—Acct. No. 8300 87

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Board of Regents—State System Registration Fee—

Special Capital Improvement Fund—

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Board of Regents—State System Tuition Fee—

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§12. State improvement fund appropriations.

§13. Specific funds and collection accounts.

§14. Appropriations for refunding erroneous payment.

§15. Sinking fund deficiencies.

§16. Appropriations to pay costs of publication of delinquent corporations.

§17. Appropriations for local governments.

§18. Total appropriations.

§19. General school fund.

1 **Section 1. Appropriations from general re-**
2 **venue.**—From the state fund, general revenue, there are
3 hereby appropriated conditionally upon the fulfillment
4 of the provisions set forth in article two, chapter five-
5 a of the code, the following amounts, as itemized, for
6 expenditure during the fiscal year one thousand nine
7 hundred ninety.

1 **Sec. 2. Appropriations of federal funds.**—In
2 accordance with article eleven, chapter four of the code,
3 from federal funds there are hereby appropriated
4 conditionally upon the fulfillment of the provisions set
5 forth in article two, chapter five-a of the code the
6 following amounts, as itemized, for expenditure during
7 the fiscal year one thousand nine hundred ninety.

LEGISLATIVE

1—Senate

Acct. No. 1010

	Federal Funds Fiscal Year 1989-90	General Revenue Fund Fiscal Year 1989-90
1 Compensation of Members .. \$	—	\$ 277,000

2	Compensation and Per		
3	Diem of Officers and		
4	Employees.....	—	1,044,759
5	Expenses of Members	—	215,000
6	Repairs and Alterations	—	30,000
7	Current Expenses and		
8	Contingent Fund	—	510,000
9	Computer Supplies	—	15,000
10	Computer Systems	—	85,000
11	Printing Blue Book.....	—	190,000
12	Total	\$ —	\$ 2,366,759

13 The appropriations for the senate for the fiscal year
 14 1988-89 are to remain in full force and effect and are
 15 hereby reappropriated to June 30, 1990. Any balances
 16 so reappropriated may be transferred and credited to
 17 the 1989-90 accounts.

18 Upon the written request of the clerk of the senate,
 19 the auditor shall transfer amounts between items of the
 20 total appropriation in order to protect or increase the
 21 efficiency of the service.

22 The clerk of the senate, with the approval of the
 23 president, is authorized to draw his requisitions upon
 24 the auditor, payable out of the Current Expenses and
 25 Contingent Fund of the senate, for any bills for supplies
 26 and services that may have been incurred by the senate
 27 and not included in the appropriation bill, for supplies
 28 and services incurred in preparation for the opening, the
 29 conduct of the business and after adjournment of any
 30 regular or extraordinary session, and for the necessary
 31 operation of the senate offices, the requisitions for the
 32 same to be accompanied by bills to be filed with the
 33 auditor.

34 The clerk of the senate, with the written approval of
 35 the president, or the president of the senate shall have
 36 authority to employ such staff personnel during any
 37 session of the Legislature as shall be needed in addition
 38 to staff personnel authorized by the senate resolution
 39 adopted during any such session. The clerk of the senate,
 40 with the written approval of the president, or the
 41 president of the senate shall have authority to employ

42 such staff personnel between sessions of the Legislature
 43 as shall be needed, the compensation of all staff
 44 personnel during and between sessions of the Legisla-
 45 ture, notwithstanding any such senate resolution, to be
 46 fixed by the president of the senate. The clerk is hereby
 47 authorized to draw his requisitions upon the auditor for
 48 the payment of all such staff personnel for such services,
 49 payable out of the appropriation for Compensation and
 50 Per Diem of Officers and Employees or Current
 51 Expenses and Contingent Fund of the senate.

52 For duties imposed by law and the senate, the clerk
 53 of the senate shall be paid a monthly salary as provided
 54 in the senate resolution adopted February 1989 and
 55 payable out of the amount appropriated for Compensa-
 56 tion and Per Diem of Officers and Employees.

57 The distribution of the blue book shall be by the office
 58 of the clerk of the senate and shall include seventy-five
 59 copies for each member of the Legislature and two
 60 copies for each classified and approved high and junior
 61 high school and one for each elementary school within
 62 the state.

2—House of Delegates

Acct. No. 1020

1	Compensation of Members .. \$	—	\$	850,630
2	Compensation and			
3	Per Diem of Officers			
4	and Employees.....	—		575,938
5	Expenses of Members	—		630,750
6	Current Expenses and			
7	Contingent Fund	—		1,224,780
8	Total	\$	—	\$ 3,282,098

9 The appropriations for the house of delegates for the
 10 fiscal year 1988-89 are to remain in full force and effect
 11 and are hereby reappropriated to June 30, 1990. Any
 12 balances so reappropriated may be transferred and
 13 credited to the 1989-90 accounts.

14 Upon the written request of the clerk of the house of
 15 delegates, the auditor shall transfer amounts between

16 items of that total appropriation in order to protect or
17 increase the efficiency of the service.

18 The clerk of the house of delegates, with the approval
19 of the speaker, is authorized to draw his requisitions
20 upon the auditor, payable out of the Current Expenses
21 and Contingent Fund of the house of delegates, for any
22 bills for supplies and services that may have been
23 incurred by the house of delegates and not included in
24 the appropriation bill, for bills for services and supplies
25 incurred in preparation for the opening of the session
26 and after adjournment, and for the necessary operation
27 of the house of delegates' offices, the requisitions for the
28 same to be accompanied by bills to be filed with the
29 auditor.

30 The speaker of the house of delegates, upon approval
31 of the house committee on rules, shall have authority to
32 employ such staff personnel during and between
33 sessions of the Legislature as shall be needed, in addition
34 to personnel designated in the house resolution, and the
35 compensation of all personnel shall be as fixed in such
36 house resolution for the session, or fixed by the speaker,
37 with the approval of the house committee on rules,
38 during and between sessions of the legislature, notwith-
39 standing such house resolution. The clerk of the house
40 is hereby authorized to draw requisitions upon the
41 auditor for such services, payable out of the appropri-
42 ation for the Compensation and Per Diem of Officers
43 and Employees or Current Expenses and Contingent
44 Fund of the house of delegates.

45 For duties imposed by law and by the house of
46 delegates, including salary allowed by law as keeper of
47 the rolls, the clerk of the house of delegates shall be paid
48 a monthly salary as provided in the house resolution,
49 unless increased between sessions under the authority of
50 the speaker, with the approval of the house committee
51 on rules, and payable out of the appropriation for
52 Compensation and Per Diem of Officers and Employees
53 or Current Expenses and Contingent Fund of the house
54 of delegates.

3—Joint Expenses

Acct. No. 1030

(WV Code Chapter 4)

1	Joint Committee on			
2	Government and Finance	\$	—	\$ 4,454,223
3	Legislative Printing		—	790,000
4	Legislative Rule-Making			
5	Review Committee		—	126,500
6	National Conference of			
7	State Legislatures		—	—0—
8	Education Commission			
9	of the States		—	—0—
10	National Association of			
11	State Auditors,			
12	Comptrollers			
13	and Treasurers		—	—0—
14	Governmental Accounting			
15	Standards Board		—	—0—
16	Council of State			
17	Governments		—	—0—
18	Total	\$	—	\$ 5,370,723

19 The appropriation for Joint Expenses for the fiscal
 20 year 1988-89 is to remain in full force and effect and
 21 is hereby reappropriated to June 30, 1990. Any balances
 22 so reappropriated may be transferred and credited to
 23 the 1989-90 accounts.

24 Upon written request of the clerk of the senate, with
 25 the approval of the president of the senate, and the clerk
 26 of the house of delegates, with approval of the speaker
 27 of the house of delegates, and a copy to the legislative
 28 auditor, the auditor shall transfer amounts between
 29 items of the total appropriation in order to protect or
 30 increase the efficiency of the service.

JUDICIAL*4—Supreme Court—General Judicial*

Acct. No. 1110

1	Personal Services	\$	—	\$ 19,074,003
2	Annual Increment		—	160,000

3	Other Expenses	—	2,850,000
4	Judges' Retirement		
5	System	—	1,174,400
6	Other Court Costs	—	2,200,000
7	Judicial Training		
8	Program	—	250,000
9	Mental Hygiene Fund	—	400,000
10	Social Security Matching ...	—	1,420,000
11	Public Employees		
12	Retirement Matching	—	1,650,000
13	Public Employees		
14	Health Insurance	—	1,520,000
15	Board of Risk and		
16	Insurance Management ..	—	—0—
17	Total	\$ —	\$ 30,698,403

18 Any unexpended balances remaining in this appropri-
 19 ation at the close of the fiscal year 1988-89 are hereby
 20 reappropriated for expenditure during the fiscal year
 21 1989-90. Any balances so reappropriated may be
 22 transferred and credited to the 1989-90 accounts.

23 The appropriation shall be administered by the
 24 administrative director of the supreme court of appeals,
 25 who shall draw his requisitions for warrants in payment
 26 in the form of payrolls, making deductions therefrom as
 27 required by law for taxes and other items.

28 The appropriation for Judges' Retirement System is
 29 to be transferred to the judges' retirement fund, in
 30 accordance with the law relating thereto, upon requis-
 31 ition of the administrative director of the supreme court
 32 of appeals.

EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

Acct. No. 1200

1	Salary of Governor	\$ —	\$ 72,000
2	Unclassified	—	1,280,696
3	Total	\$ —	\$ 1,352,696

6—Governor's Office—Custodial Fund

(WV Code Chapter 5)

Acct. No. 1230

1	Unclassified—Total	\$	—	\$	339,739
2	To be used for current general expenses, including				
3	compensation of employees, household maintenance, cost				
4	of official functions and additional household expenses				
5	occasioned by such official functions.				

7—Governor's Office—

Civil Contingent Fund

(WV Code Chapter 5)

Acct. No. 1240

1	Humanities Foundation				
2	Grants.....	\$	—	\$	200,000
3	Unclassified—	\$	—		712,500
4	Total	\$	—	\$	912,500

5 Any unexpended balance remaining in the appropri-
 6 ation (account no. 1240-06) at the close of the fiscal year
 7 1988-89 is hereby reappropriated for expenditure
 8 during the fiscal year 1989-90.

9 From this appropriation there may be expended, at
 10 the discretion of the governor, an amount not to exceed
 11 \$1,000 as West Virginia's contribution to the Interstate
 12 Oil Compact Commission.

8—Governor's Office—
Debt Service

(WV Code Chapter 5)

Acct. No. 1250

1	Pneumoconiosis Fund				
2	(Debt Service)	\$	—	\$	—0—
3	Loan Fund—(Debt Service) ..		—	\$	—0—
4	Total	\$	—	\$	—0—

9—Auditor's Office—General Administration

(WV Code Chapter 12)

Acct. No. 1500

1	Salary of Auditor	\$	—	\$	46,800
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2	Other Personal Services	—	1,461,929
3	Annual Increment	—	28,440
4	Employee Benefits	—	406,112
5	Unclassified	—	584,175
6	Total	\$ —	\$ 2,527,456

10—Treasurer's Office

(WV Code Chapter 12)

Acct. No. 1600

1	Salary of Treasurer	\$ —	\$ 50,400
2	Other Personal Services	—	496,510
3	Annual Increment	—	7,128
4	Employee Benefits	—	144,465
5	Unclassified	—	202,130
6	Total	\$ —	\$ 900,633

*11—Treasurer's Office—**School Building Sinking Fund*

(WV Code Chapter 12)

Acct. No. 1650

1	Total	\$ —	\$ 13,346,500
2	Any unexpended balance remaining in the appropri-		
3	ation for Treasurer's Office—School Building Sinking		
4	Fund (account no. 1650-06) at the close of the fiscal year		
5	1988-89 is hereby reappropriated for expenditure		
6	during the fiscal year 1989-90.		

12—Attorney General

(WV Code Chapters 5, 14, 46 and 47)

Acct. No. 2400

1	Salary of Attorney		
2	General	\$ —	\$ 50,400
3	Other Personal Services	—	1,831,360
4	Annual Increment	—	15,480
5	Employee Benefits	—	423,351
6	Asbestos Litigation Fund ...	—	360,000
7	Unclassified	—	417,603
8	Total	\$ —	\$ 3,098,194

9 Any unexpended balance remaining in the appropri-
 10 ation for Publication of Reports and Opinions (account
 11 no. 2400-05) at the close of the fiscal year 1988-89 is
 12 hereby reappropriated for expenditure during the fiscal
 13 year 1989-90.

14 When legal counsel or secretarial help is appointed by
 15 the attorney general for any state spending unit, this
 16 account shall be reimbursed from such unit's appropri-
 17 ated account.

13—Secretary of State

(WV Code Chapters 3, 5 and 59)

Acct. No. 2500

1	Salary of Secretary			
2	of State	\$	—	\$ 43,200
3	Other Personal Services		—	441,526
4	Annual Increment		—	4,248
5	Employee Benefits		—	140,552
6	Unclassified		—	149,828
7	Special Election		—	1,184,994
8	Total	\$	—	\$ 1,964,348

14—State Elections Commission

(WV Code Chapter 3)

Acct. No. 2600

1	Unclassified—Total	\$	—	\$ 11,400
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15—Department of Agriculture

(WV Code Chapter 19)

Acct. No. 5100

1	Salary of			
2	Commissioner	\$	—	\$ 46,800
3	Other Personal			
4	Services		—	2,045,456
5	Annual Increment		—	46,476
6	Employee Benefits		—	597,519
7	Unclassified		1,699,588	669,032
8	Total	\$	1,699,588	\$ 3,405,283

9 Out of the above general revenue funds a sum may
10 be used to match federal funds for the eradication and
11 control of pest and plant disease.

16—Farm Management Commission

(WV Code Chapter 19)

Acct. No. 5110

1	Personal Services	\$	—	\$	592,940
2	Annual Increment		—		16,848
3	Employee Benefits		—		195,954
4	Unclassified		—		901,373
5	Total	\$	—	\$	1,707,115

*17—Department of Agriculture—
Soil Conservation Committee*

(WV Code Chapter 19)

Acct. No. 5120

1	Personal Services	\$	—	\$	304,748
2	Annual Increment		—		4,400
3	Employee Benefits		—		83,288
4	Construction, Maintenance and Emergency Repairs ..		—		1,259,919
6	Unclassified		—		88,393
7	Total	\$	—	\$	1,740,748

*18—Department of Agriculture—
Division of Rural Resources
(Matching Fund)*

(WV Code Chapter 19)

Acct. No. 5130

1	Personal Services	\$	—	\$	449,585
2	Annual Increment		—		11,952
3	Employee Benefits		—		147,511
4	Unclassified		—		226,825
5	Total	\$	—	\$	835,873

6 Any part or all of this appropriation from the general
7 revenue may be transferred to a special revenue fund
8 for the purpose of matching federal funds for the above-
9 named program.

*19—Department of Agriculture—
Meat Inspection*

(WV Code Chapter 19)

Acct. No. 5140

1	Personal Services	\$	—	\$	249,600
2	Annual Increment		—		7,055
3	Employee Benefits		—		45,940
4	Unclassified		604,118		80,042
5	Total	\$	604,118	\$	382,637

6 Any part or all of this appropriation from the general
7 revenue may be transferred to a special revenue fund
8 for the purpose of matching federal funds for the above-
9 named program.

*20—Department of Agriculture—
Agricultural Awards*

(WV Code Chapter 19)

Acct. No. 5150

1	Agricultural Awards	\$	—	\$	66,500
2	Fairs and Festivals		—		186,627
3	Total	\$	—	\$	253,127

DEPARTMENT OF ADMINISTRATION

*21—Department of Administration—
Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 2050

1	Unclassified—Total	\$	—	\$	187,500
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*22—Division of Finance
and Administration*

(WV Code Chapter 5A)

Acct. No. 2100

1	Personal Services	\$	—	\$	1,923,766
2	Annual Increment		—		40,000

3	Employee Benefits	—	576,986
4	Unclassified	2,410,451	1,728,713
5	Fire Service Fee	—	39,000
6	National Governors'		
7	Association	—	57,400
8	Southern States		
9	Energy Board	—	23,938
10	Total	\$ 2,410,451	\$ 4,389,803

11 Any unexpended balance remaining in the appropri-
 12 ation (1) Retrofit Elevator in Attorney General's Section
 13 and (2) Retrofit Other Elevators in the Capitol Building
 14 (account no. 2100-28) at the close of the fiscal year 1988-
 15 89 is hereby reappropriated for expenditure during the
 16 fiscal year 1989-90.

17 There is hereby established a revolving fund for
 18 postage meter service requirements for all spending
 19 units operating from the general revenue fund, from
 20 special revenue funds or receiving reimbursement for
 21 postage from the federal government.

22 Each spending unit shall be charged monthly for all
 23 postage meter service and shall reimburse the revolving
 24 fund monthly for all such amounts.

25 The division of highways shall reimburse account no.
 26 8148-42 for all actual expenses incurred pursuant to the
 27 provisions of section thirteen, article two-a, chapter
 28 seventeen of the code.

*23—Board of Risk and
 Insurance Management*

(WV Code Chapter 29)

Acct. No. 2250

1	Personal Services	\$ —	\$ 12,000
2	Employee Benefits	—	—0—
3	Unclassified	—	4,169,291
4	Total	\$ —	\$ 4,181,291

5 The Unclassified item of appropriation herein in-
 6 cludes funding for the purpose of paying premiums, self-
 7 insurance losses, loss adjustment expenses and loss

8 prevention engineering fees for property, casualty and
 9 fidelity insurance for the various state agencies, except
 10 those operating from special revenue funds, with such
 11 special revenue fund agencies to be billed by the state
 12 board of insurance and with such costs to be a proper
 13 charge against such spending units.

14 These funds may be transferred to a special account
 15 for the payment of premiums, self-insurance losses, loss
 16 adjustment expenses and loss prevention engineering
 17 fees and may be transferred to a special account for
 18 disbursement for payment of premiums and insurance
 19 losses.

24—Commission on Uniform State Laws

(WV Code Chapter 29)

Acct. No. 2450

1 Unclassified—Total \$ — \$ 15,000

2 To pay expenses of members of the commission on
 3 uniform state laws.

25—Teachers' Retirement System

(WV Code Chapter 18)

Acct. No. 2980

1 Unclassified—Total \$ — \$ 11,849,969

*26—Division of Personnel of the
 Civil Service System and the
 Civil Service Commission*

(WV Code Chapter 29)

Acct. No. 5840

1	Personal Services	\$	—	\$	780,718
2	Annual Increment		—		15,012
3	Employee Benefits		—		224,895
4	Unclassified		—		166,676
5	Total	\$	—	\$	1,187,301

6 The director shall maintain accurate records reflect-
 7 ing the cost of administering the provisions of this
 8 appropriation. At the close of each quarter-year period,
 9 the director shall summarize the cost and shall bill each
 10 department, commission, board or agency which re-
 11 ceives support from any funds other than the general
 12 revenue fund for a prorata share of the administrative
 13 cost based on the relationship between the quarterly
 14 average number of employees in the service of such
 15 department, commission, board or agency and the
 16 quarterly average number of employees in the service
 17 of all the departments, commissions, boards and
 18 agencies of the state for the appropriate calendar
 19 quarter.

20 This reimbursement is to be deposited in the general
 21 revenue fund.

27—Public Legal Services Council

(WV Code Chapter 29)

Acct. No. 5900

1	Personal Services	\$	—	\$	234,585
2	Annual Increment		—		2,556
3	Employee Benefits		—		54,130
4	Unclassified		—		6,170,267
5	Total	\$	—	\$	6,461,538

6 Any unexpended balances remaining in the appropri-
 7 ations for Appointed Counsel Fees (account no. 5900-11)
 8 and Unclassified (account no. 5900-18) at the close of the
 9 fiscal year 1988-89 are hereby reappropriated for
 10 expenditure during the fiscal year 1989-90.

28—Education and State Employees Grievance Board

(WV Code Chapter 18)

Acct. No. 6015

1	Personal Services	\$	—	\$	337,417
2	Annual Increment		—		2,196
3	Employee Benefits		—		73,902

4	Unclassified	—	128,990
5	Total	\$ —	\$ 542,505

29—Public Employees Retirement System
(WV Code Chapter 5)

Acct. No. 6140

1	Supplemental Benefits for		
2	Annuitants—Total	\$ —	\$ 2,030,000

3 The division of highways, division of motor vehicles,
4 workers' compensation commissioner, public service
5 commission and other departments or divisions operat-
6 ing from special revenue funds and/or federal funds
7 shall pay their proportionate share of the retirement
8 costs for their respective divisions. When specific
9 appropriations are not made, such payments may be
10 made from the balances in the various special revenue
11 funds in excess of specific appropriations.

30—Public Employees Insurance Agency
(WV Code Chapter 5)

Acct. No. 6150

1	Unclassified—Total	\$ —	\$ —0—
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2 The above appropriation and any special revenue
3 received are intended to cover employers' contribution
4 as defined in article sixteen, chapter five of the code.

5 The division of highways, division of motor vehicles,
6 workers' compensation commissioner, public service
7 commission and other departments or divisions operat-
8 ing from special revenue funds and/or federal funds
9 shall pay their proportionate share of the public
10 employees health insurance cost for their respective
11 divisions. When specific appropriations are not made,
12 such payments may be made from the balances in the
13 various special revenue funds in excess of specific
14 appropriations.

31—Ethics Commission

(WV Code Chapter 6B)

Acct. No. 6155

1	Unclassified—Total	\$	—	\$	400,000
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**DEPARTMENT OF COMMERCE, LABOR
AND ENVIRONMENTAL RESOURCES**

*32—Department of Commerce, Labor
and Environmental Resources—
Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 1205

1	Unclassified—Total	\$	—	\$	187,500
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*33—Office of Community and
Industrial Development*

(WV Code Chapter 5B)

Acct. No. 1210

1	Personal Services	\$	—	\$	1,954,784
2	Annual Increment		—		23,565
3	Employee Benefits		—		435,192
4	Unclassified		12,774,444		3,165,107
5	Total	\$	12,774,444	\$	5,578,648

1 Any unexpended balances remaining in the appropri-
 2 ations for Partnership Grants (account no. 1210-15) and
 3 Flood (account no. 1210-19) at the close of the fiscal year
 4 1988-89 are hereby reappropriated for expenditure
 5 during the fiscal year 1989-90.

*34—Office of Community and Industrial
Development—Emergency Employment,
Training and Education*

(WV Code Chapter 5)

Acct. No. 1220

1 Any unexpended balances remaining in the appropri-
 2 ations for Emergency Jobs Program—Public Service

- 3 Jobs (account no. 1220-05) at the close of the fiscal year
 4 1988-89 is hereby reappropriated for expenditure
 5 during the fiscal year 1989-90.

*35—Resource Recovery—
 Solid Waste Disposal Authority*

(WV Code Chapter 16)

Acct. No. 4020

1	Personal Services	\$	—	\$	71,124
2	Annual Increment		—		1,008
3	Employee Benefits		—		16,955
4	Unclassified		—		26,449
5	Total	\$	—	\$	115,536

36—Division of Labor

(WV Code Chapters 21 and 47)

Acct. No. 4500

1	Personal Services	\$	—	\$	845,028
2	Annual Increment		—		10,008
3	Employee Benefits		—		282,235
4	Unclassified		298,836		158,857
5	Total	\$	298,836	\$	1,296,128

37—Division of Commerce

(WV Code Chapter 5B)

Acct. No. 4625

1	Personal Services	\$	—	\$	6,773,716
2	Annual Increment		—		201,404
3	Employee Benefits		—		2,366,094
4	Unclassified		400,000		—0—
5	Total	\$	400,000	\$	9,341,214

- 6 Any unexpended balances remaining in the appropri-
 7 ations for Cacapon State Park (account no. 4625-65) and
 8 Capital Outlay (account no. 4625-10) at the close of the
 9 fiscal year 1988-89 are hereby reappropriated for
 10 expenditure during the fiscal year 1989-90.

- 11 Any revenue derived from mineral extraction at any

12 state park shall be deposited in a special revenue
 13 account of the division of commerce, first for bond debt
 14 payment purposes and with any remainder to be for
 15 park operation and improvement purposes.

16 The Blennerhassett Historical State Park, account
 17 number 5660, funding is now included in lines 1, 2, 3,
 18 4, and 5.

*38—Board of Coal Mine
 Health and Safety*

(WV Code Chapter 22)

Acct. No. 4720

1	Personal Services	\$	—	\$	45,992
2	Annual Increment		—		288
3	Employee Benefits		—		8,460
4	Unclassified		—		8,595
5	Total	\$	—	\$	63,335

*39—Interstate Commission on
 Potomac River Basin*

(WV Code Chapter 29)

Acct. No. 4730

1	West Virginia's				
2	Contribution				
3	to the Interstate				
4	Commission on				
5	Potomac River Basin—				
6	Total	\$	—	\$	25,620

*40—Ohio River Valley Water
 Sanitation Commission*

(WV Code Chapter 29)

Acct. No. 4740

1	West Virginia's				
2	Contribution to the				
3	Ohio River Valley				
4	Water Sanitation				
5	Commission—				
6	Total	\$	—	\$	85,725

*41—Coal Mine Safety and
Technical Review Committee*

(WV Code Chapter 22)

Acct. No. 4750

1	Personal Services	\$	—	\$	7,680
2	Employee Benefits		—		1,312
3	Unclassified		—		63,307
4	Total	\$	—	\$	72,299

*42—Air Pollution
Control Commission*

(WV Code Chapter 16)

Acct. No. 4760

1	Personal Services	\$	—	\$	571,709
2	Annual Increment		—		6,684
3	Employee Benefits		—		156,519
4	Unclassified		1,242,415		196,090
5	Total	\$	1,242,415	\$	931,002

43—Division of Energy

(WV Code Chapter 22)

Acct. No. 4775

1	Personal Services	\$	—	\$	4,458,780
2	Annual Increment		—		78,000
3	Employee Benefits		—		1,192,714
4	Unclassified		97,573,930		1,112,477
5	Total	\$	97,573,930	\$	6,841,971

44—Division of Forestry

(WV Code Chapter 19)

Acct. No. 5160

1	Personal Services	\$	—	\$	1,993,795
2	Annual Increment		—		42,768
3	Employee Benefits		—		363,933
4	Unclassified		320,610		526,759
5	Total	\$	320,610	\$	2,927,255

- 6 Out of the above general revenue funds, a sum may
 7 be used to match federal funds for cooperative studies
 8 or other funds for similar purposes.

45—Geological and Economic Survey

(WV Code Chapter 29)

Acct. No. 5200

1	Personal Services	\$	—	\$	1,186,339
2	Annual Increment		—		19,404
3	Employee Benefits		—		316,589
4	Unclassified		627,000		163,559
5	Total	\$	627,000	\$	1,685,891

- 6 The Unclassified appropriation includes funding to
 7 secure federal and other contracts and may be trans-
 8 ferred to a special revenue account for the purpose of
 9 providing advance funding for such contracts.

- 10 Any unexpended balance remaining in the appropri-
 11 ation To Secure Federal and Other Contracts (account
 12 no. 5200-07) at the close of the fiscal year 1988-89 is
 13 hereby reappropriated for expenditure during the fiscal
 14 year 1989-90.

46—Water Resources Board

(WV Code Chapter 20)

Acct. No. 5640

1	Personal Services	\$	—	\$	62,012
2	Annual Increment		—		792
3	Employee Benefits		—		13,023
4	Unclassified		—		49,039
5	Total	\$	—	\$	124,866

47—Division of Natural Resources

(WV Code Chapter 20)

Acct. No. 5650

1	Personal Services	\$	—	\$	2,834,016
2	Annual Increment		—		67,968
3	Employee Benefits		—		799,276
4	Black Fly Control		—		
5	Spraying Project		—		230,000

6	Unclassified	10,616,851		777,788
7	Total	\$10,616,851	\$	4,709,048

*48—Blennerhassett Historical
Park Commission*

(WV Code Chapter 29)

Acct. No. 5660

1	Personal Services	\$	—	\$	—0—
2	Annual Increment		—		—0—
3	Employee Benefits		—		—0—
4	Unclassified		—		—0—
5	Total	\$	—	\$	—0—
6	Any unexpended balances remaining in the appropri-				
7	ations for Blennerhassett Island (account no. 5660-07)				
8	and in the item in this account designated Unclassified				
9	at the close of the fiscal year 1988-89 is hereby				
10	reappropriated for expenditure during the fiscal year				
11	1989-90.				

49—Water Development Authority

(WV Code Chapter 20)

Acct. No. 5670

1	Unclassified—Total	\$18,919,200	\$	—0—
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2	Any unexpended balances remaining in the appropri-			
3	ations for Phase III Hardship Grants (account no. 5670-			
4	08), Hardship Grants (account no. 5670-10), Loan and			
5	Grant Program (account no. 5670-17) and Capital			
6	Outlay-Sewer (account no. 5670-20) at the close of the			
7	fiscal year 1988-89 are hereby reappropriated for			
8	expenditure during the fiscal year 1989-90.			

DEPARTMENT OF EDUCATION

50—State Department of Education

(WV Code Chapters 18 and 18A)

Acct. No. 2860

1	Personal Services	\$	—	\$	2,654,931
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2	Annual Increment	—	42,781
3	Employee Benefits	—	923,538
4	Unclassified	3,163,800	7,531,400
5	Education of		
6	Institutionalized		
7	Juveniles	—	1,213,042
8	Total	\$ 3,163,800	\$ 12,365,692

9 The above appropriation includes the state board of
10 education and their executive office.

*51—State Department of Education—
School Lunch Program*

(WV Code Chapters 18 and 18A)

Acct. No. 2870

1	Personal Services	\$ —	\$ 156,684
2	Annual Increment	—	3,708
3	Employee Benefits	—	59,954
4	Unclassified	51,029,681	1,722,724
5	Total	\$51,029,681	\$ 1,943,070

*52—State Board of Education—
Vocational Division*

(WV Code Chapters 18 and 18A)

Acct. No. 2890

1	Personal Services	\$ —	\$ 665,100
2	Annual Increment	—	10,000
3	Employee Benefits	—	183,738
4	Unclassified	10,344,779	11,776,876
5	Albert Yanni		
6	Vocational Program	—	325,000
7	Total	\$10,344,779	\$ 12,960,714

*53—State Department of Education—
State Aid to Schools*

(WV Code Chapters 18 and 18A)

Acct. No. 2950

1	Unclassified	\$ —	\$ —0—
2	Professional Educators	—	481,692,211

3	Salary Equity	—	11,274,055
4	Service Personnel	—	174,086,119
5	Fixed Charges	—	240,400,000
6	Transportation	—	23,734,641
7	Administration	—	6,179,454
8	Other Current Expenses	—	83,796,821
9	Improve Instructional		
10	Programs	—	45,952,893
11	Rural Loss Assistance	—	305,976
12	Basic Foundation		
13	Allowances	—	1,067,422,170
14	Less Local Share	—	(143,314,077)
15	Total Basic State Aid	—	924,108,093
16	Increased Enrollment	—	400,000
17	Incentive for Administration	—	9,876
18	Total	\$ —	\$924,517,969

*54—State Department of Education—
Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Acct. No. 2960

1	Unclassified—Total	\$24,133,000	\$ —0—
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*55—West Virginia Schools for the
Deaf and the Blind*

(WV Code Chapters 18 and 18A)

Acct. No. 3330

1	Personal Services	\$ —	\$ 3,914,782
2	Annual Increment	—	5,040
3	Employee Benefits	—	940,167
4	Unclassified	—	1,304,807
5	Total	\$ —	\$ 6,164,796

56—State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Acct. No. 3360

1	Personal Services	\$ —	\$ 131,996
2	Annual Increment	—	2,989
3	Employee Benefits	—	24,727

4	Unclassified	—	68,175
5	Total	\$ —	\$ 227,887

*57—State Board of Rehabilitation—
Division of Rehabilitation Services*

(WV Code Chapter 18)

Acct. No. 4405

1	Personal Services	\$ —	\$ 4,413,458
2	Annual Increment	—	276,480
3	Employee Benefits	—	2,189,455
4	Unclassified	26,911,000	3,851,979
5	Certification of the		
6	Rehabilitation Center	—	500,000
7	Total	\$26,911,000	\$ 11,231,372

**DEPARTMENT OF EDUCATION
AND THE ARTS**

*58—Department of Education and the Arts—
Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 2755

1	Underwood-Smith		
2	Scholarship Program	\$ —	\$ 400,000
3	Market Pay Adjustment	—	225,000
4	Unclassified	\$ —	187,500
5	Total	\$ —	\$ 812,500

*59—Board of Directors of
State College System*

Control Account

(WV Code Chapter 18B)

Acct. No. 2785

1	Unclassified—Total	\$ 66,694,541
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60—Board of Regents (Control)

(WV Code Chapter 18)

Acct. No. 2790

1	Unclassified—Total	\$ —	\$ —0—
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*61—Board of Trustees of the
University System of West Virginia*

(Board of Regents)

Control Account

(WV Code Chapter 18B)

Acct. No. 2795

1 Unclassified—Total \$123,201,844

*62—Board of Trustees of the University System
of West Virginia Board of Directors of the
State College System*

(Board of Regents)

Consolidated Staff Account

(WV Code Chapter 18B)

Acct. No. 2800

1	Personal Services	\$	—	\$	—0—
2	Annual Increment		—		—0—
3	Employee Benefits		—		—0—
4	Unclassified		—		—0—
5	Unclassified (Central Office)		—		1,204,682
6	Higher Education Grant				
7	Program		—		3,595,000
8	Contract Tuition Program...		—		681,000
9	Eminent Scholars Program		—		150,000
10	Total	\$	—	\$	5,630,682

11 Any unexpended balance remaining in the appropri-
12 ation for Asbestos Litigation (account no. 2800-21) at the
13 close of the fiscal year 1988-89 is hereby reappropriated
14 for expenditure during the fiscal year 1989-90.

63—School of Osteopathic Medicine

(WV Code Chapter 18)

Acct. No. 2810

1 Unclassified—Total \$ — \$ —0—

64—Marshall University—Medical School

(WV Code Chapter 18)

Acct. No. 2840

1	Unclassified—Total	\$	—	\$	—0—
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*65—West Virginia University—
Schools of Health Sciences*

(WV Code Chapter 18)

Acct. No. 2850

1	Unclassified—Total	\$	—	\$	—0—
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- | | |
|---|---|
| 2 | May be transferred to West Virginia University— |
| 3 | medical school fund upon requisition of the governor. |

*66—Board of Trustees of the
University System of West Virginia*

(Board of Regents)

Medical Schools and Health Science Center Account

(WV Code Chapter 18B)

Acct. No. 2855

1	Unclassified—Total	\$	—	\$	46,977,475
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67—Educational Broadcasting Authority

(WV Code Chapter 10)

Acct. No. 2910

1	Personal Services	\$	—	\$	84,867
2	Annual Increment	—	—	—	648
3	Employee Benefits	—	—	—	649,948
4	Unclassified	1,423,800	—	—	4,886,010
5	Total	\$ 1,423,800	\$	5,621,473	—

6 The Unclassified appropriation includes funding for
 7 the construction and operation of regional ETV and
 8 radio stations. These funds may be transferred to special
 9 revenue accounts for matching college, university, city,
 10 county, federal and/or other generated revenue.

68—Library Commission

(WV Code Chapter 10)

Acct. No. 3500

1	Personal Services	\$	—	\$	944,951
2	Annual Increment		—		22,536
3	Employee Benefits		—		257,861
4	Unclassified		1,137,593		6,570,574
5	Total	\$	1,137,593	\$	7,795,922

69—Division of Culture and History

(WV Code Chapter 29)

Acct. No. 3510

1	Personal Services	\$	—	\$	1,107,990
2	Annual Increment		—		13,806
3	Project 2021		—		325,000
4	Employee Benefits		—		379,177
5	Unclassified		1,946,250		2,452,003
6	Total	\$	1,946,250	\$	4,277,976

7 The Unclassified appropriation includes funding for
 8 the Arts Fund, Department Programming Funds,
 9 Grants, Fairs and Festivals and Washington Carver
 10 Camp and shall be expended only upon authorization of
 11 the division of culture and history and in accordance
 12 with the provisions of chapter five-a and article three,
 13 chapter twelve of the code.

14 All federal moneys received as reimbursement to the
 15 division of culture and history for moneys expended
 16 from the general revenue fund for the Arts Fund and
 17 Historical Preservation are hereby reappropriated for
 18 the purposes as originally made, including personal
 19 services, current expenses and equipment.

**DEPARTMENT OF HEALTH
AND HUMAN RESOURCES**

*70—Department of Health and Human
Resources—Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 3990

1	Unclassified—Total	\$	—	\$	187,500
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71—*Division of Health—
Central Office*

(WV Code Chapter 16)

Acct. No. 4000

1	Personal Services	\$	—	\$	5,130,530
2	Minden-Shaffer Study		—		25,000
3	Annual Increment		—		100,000
4	Corporate Nonprofit				
5	Community Health				
6	Centers—F.M.H.A.				
7	Mortgage Finance		—		105,913
8	Employee Benefits		—		1,648,770
9	Unclassified		—		4,511,924
10	Total	\$	—	\$	11,522,137

11 Any unexpended balances remaining in the appropri-
 12 ations for Placement Programs for the Developmentally
 13 Disabled (account no. 4000-13). Agent Orange (account
 14 no. 4000-17) and Reimbursement to Community Mental
 15 Health and Mental Retardation Centers (account no.
 16 4201-18) at the close of the fiscal year 1988-89 are
 17 hereby reappropriated for expenditure during the fiscal
 18 year 1989-90.

72—*Division of Veterans' Affairs—
Veterans' Home*

(WV Code Chapter 9A)

Acct. No. 4010

1	Personal Services	\$	—	\$	787,169
2	Annual Increment		—		18,504
3	Employee Benefits		—		260,479
4	Unclassified		422,400		—0—
5	Total	\$	422,400	\$	1,066,152

6 Any unexpended balances remaining in the appropri-
 7 ations for Repairs and Alterations (account no. 4010-02)
 8 and Equipment (account no. 4010-03) at the close of the
 9 fiscal year 1988-89 are hereby reappropriated for
 10 expenditure during the fiscal year 1989-90.

73—Division of Veterans' Affairs

(WV Code Chapter 9A)

Acct. No. 4040

1	Personal Services	\$	—	\$	625,114
2	Annual Increment		—		13,104
3	Employee Benefits		—		206,958
4	Unclassified		—		92,029
5	Total	\$	—	\$	937,205

74—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Acct. No. 4050

1	Personal Services	\$	—	\$	10,142,098
2	Annual Increment		—		478,400
3	Employee Benefits		—		3,042,782
4	Medical Services		—		99,148,917
5	Unclassified		460,944,761		52,108,489
6	Total		\$460,944,761		\$164,920,686

7 Medical services line item includes funding for Title
 8 XIX Waiver.

75—Commission on Aging

(WV Code Chapter 29)

Acct. No. 4060

1	State Office Function				
2	Personal Services	\$	—	\$	114,222
3	Annual Increment		—		2,268
4	Employee Benefits		—		33,971
5	Unclassified		11,085,000		7,500
6	Area Agencies on Aging				
7	Administration		—		706,032
8	Substate Ombudsman		—		262,908
9	Local Programs				
10	Service Delivery Costs		—		2,227,243
11	Attorney General		—		14,000
12	Silver Haired Legislature ...		—		20,000

13	Golden Mountaineer	—	22,500
14	Total	\$11,085,000	\$ 3,410,644

15 Any unexpended balance remaining in the appropri-
 16 ation for Senior Citizen Centers—Land Acquisition,
 17 Construction Repairs and Alterations (account no. 4060-
 18 10) at the close of the fiscal year 1988-89 is hereby
 19 reappropriated for expenditure during the fiscal year
 20 1989-90.

76—Developmental Disabilities Planning Council

Acct. No. 4080

1	Unclassified—Total	\$ 686,610	\$ —
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77—Consolidated Medical Service Fund

Acct. No. 4190

1	Foster Grandparents		
2	Stipends/Travel	\$ —	\$ 62,000
3	Institutional Facilities		
4	Operations	\$ —	\$ 47,068,946
5	Employee Benefits	—	15,034,308
6	Poision Control		
7	Hotline	—	250,000
8	ICF/MR Match	—	5,800,000
9	Special Olympics	—	28,000
10	State Aid to		
11	Local Agencies	—	6,700,000
12	Maternal and Child		
13	Health Clinic,		
14	Clinicians & Medical		
15	Contracts and Fees	—	2,600,000
16	Continuum of Care	—	850,000
17	Primary Care		
18	Contracts to Community		
19	Health Centers	—	2,705,000
20	Epidemiology Research	—	250,000
21	Grants to Counties		
22	and EMS Entities	—	1,725,000
23	Behavioral Health		
24	Program	—	28,027,000
25	Unclassified	24,182,962	—0—
26	Total	\$24,182,962	\$ 111,100,254

27 Any unexpended balance remaining in the appropri-
28 ation for Placement Programs for the Developmentally
29 Disabled (account no. 4190-16) at the close of the fiscal
30 year 1988-89 is hereby reappropriated for expenditure
31 during the fiscal year 1989-90.

32 The director of health, prior to the beginning of the
33 fiscal year, shall file with the legislative auditor an
34 expenditure schedule for each formerly separate
35 spending unit which has been consolidated into the
36 above account and which receives a portion of the above
37 appropriation. He shall also, within fifteen days after
38 the close of the six-month period of said fiscal year, file
39 with the legislative auditor an itemized report of
40 expenditures made during the preceding six-month
41 period.

42 Includes funds for state match ICF-MR Group Homes.

43 Additional funds have been appropriated in account
44 no. 8500 for operation of the medical facilities.

45 No funds from this account, or any other health
46 department account shall be used to pay for the Court
47 Monitor salaries or expenses.

78—Human Rights Commission

(WV Code Chapter 5)

Acct. No. 5980

1	Personal Services	\$	—	\$	378,376
2	Annual Increment		—		6,389
3	Employee Benefits		—		111,023
4	Unclassified		102,190		181,219
5	Total	\$	102,190	\$	677,007

79—Women's Commission

(WV Code Chapter 29)

Acct. No. 6000

1	Personal Services	\$	—	\$	50,893
2	Annual Increment		—		432

3	Employee Benefits	—	8,956
4	Unclassified	—	10,424
5	Total	\$ —	\$ 70,705

DEPARTMENT OF PUBLIC SAFETY

*80—Department of Public Safety—
Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 1255

1	Unclassified—Total	\$ —	\$ 187,500
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*81—Office of Emergency Services and Advisory Council—
Division of Emergency Services*

(WV Code Chapter 15)

Acct. No. 1300

1	Personal Services	\$ —	\$ 203,214
2	Annual Increment	—	5,868
3	Employee Benefits	—	57,722
4	Unclassified	805,527	11,172
5	Integrated Flood		
6	Observance Warning		
7	System—Equipment	273,000	—
8	Total	\$ 1,078,527	\$ 277,976

82—Board of Probation and Parole

(WV Code Chapter 62)

Acct. No. 3650

1	Salaries of Members		
2	of Board of Probation		
3	and Parole	\$ —	\$ 81,000
4	Other Personal Services	—	54,152
5	Annual Increment	—	1,188
6	Employee Benefits	—	28,930
7	Unclassified	—	21,123
8	Total	\$ —	\$ 186,393

*83—Division of Corrections—
Central Office*

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3680

1	Personal Services	\$	—	\$	380,869
2	Annual Increment		—		6,408
3	Employee Benefits		—		99,765
4	Unclassified		—		164,290
5	Total	\$	—	\$	651,332

*84—Division of Corrections—
Correctional Units*

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3770

1	Personal Services	\$	—	\$	12,125,856
2	Annual Increment		—		182,818
3	Employee Benefits		—		3,726,355
4	Unclassified		—		8,017,158
5	Total	\$	—	\$	24,052,187

6 Any unexpended balances remaining in the appropri-
7 ations for Capital Outlay (account no. 3770-04) and
8 Pruntytown Facility—Unclassified (account no. 3770-07)
9 at the close of the fiscal year 1988-89 are hereby
10 reappropriated for expenditure during the fiscal year
11 1989-90.

12 The commissioner of corrections, prior to the begin-
13 ning of the fiscal year, shall file with the legislative
14 auditor an expenditure schedule for each formerly
15 separate spending unit which has been consolidated into
16 the above account and which receives a portion of the
17 above appropriation. He shall also, within fifteen days
18 after the close of each six-month period of said fiscal
19 year, file with the legislative auditor an itemized report
20 of expenditures made during the preceeding six-month
21 period. Such report shall include the total of expendi-
22 tures made for personal services, annual increment,
23 current expenses (inmate medical expenses and other),
24 repairs and alterations and equipment.

85—Division of Public Safety

(WV Code Chapter 15)

Acct. No. 5700

1	Personal Services	\$	—	\$	15,797,532
2	Annual Increment		—		91,944
3	Employee Benefits		—		3,928,188
4	Unclassified		372,025		7,080,230
5	Total	\$	372,025	\$	26,897,894

86—Adjutant General—State Militia

(WV Code Chapter 15)

Acct. No. 5800

1	Personal Services	\$	—	\$	256,723
2	Annual Increment		—		5,652
3	Employee Benefits		—		430,779
4	Unclassified		2,952,101		3,413,666
5	Total	\$	2,952,101	\$	4,106,820

87—Fire Commission

(WV Code Chapter 29)

Acct. No. 6170

1	Personal Services	\$	—	\$	544,552
2	Annual Increment		—		11,196
3	Employee Benefits		—		165,242
4	Unclassified		—		155,350
5	Total	\$	—	\$	876,340

DEPARTMENT OF TAX AND REVENUE*88—Department of Tax and Revenue**Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 1680

1	Unclassified—Total	\$	—	\$	187,500
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89—Municipal Bond Commission

(WV Code Chapter 13)

Acct. No. 1700

1	Personal Services	\$	—	\$	74,570
2	Annual Increment		—		1,044
3	Employee Benefits		—		20,702
4	Unclassified		—		18,697
5	Total	\$	—	\$	115,013

90—Tax Division

(WV Code Chapter 11)

Acct. No. 1800

1	Personal Services	\$	—	\$	8,838,180
2	Annual Increment		—		145,000
3	Employee Benefits		—		2,472,404
4	Unclassified		—		4,212,756
5	Total	\$	—	\$	15,668,340

6 Any unexpended balance remaining in the appropri-
 7 ation for Other Expenses (account no. 1800-07) at the
 8 close of the fiscal year 1988-89 is hereby reappropriated
 9 for expenditure during the fiscal year 1989-90.

*91—Division of Professional and**Occupational Licenses—**State Athletic Commission*

(WV Code Chapter 29)

Acct. No. 4790

1	Unclassified—Total	\$	—	\$	5,225
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*92—Office of Nonintoxicating
Beer Commissioner*

(WV Code Chapter 11)

Acct. No. 4900

1	Personal Services	\$	—	\$	313,581
2	Annual Increment		—		4,250
3	Employee Benefits		—		79,439
4	Unclassified		—		86,773
5	Total	\$	—	\$	484,043

93—Racing Commission

(WV Code Chapter 19)

Acct. No. 4950

1	Personal Services	\$	—	\$	1,027,293
2	Annual Increment		—		8,000
3	Employee Benefits		—		256,517
4	Unclassified		—		90,000
5	Total	\$	—	\$	1,381,810

DEPARTMENT OF TRANSPORTATION*94—Department of Transportation—
Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 4825

1	Civil Air Patrol	\$	—	\$	85,000
2	Unclassified—		—		187,500
3	Total	\$	—	\$	272,500

4 Any unexpended balance remaining in the appropri-
 5 ation for Aeronautics Commission—Airport Matching
 6 (account no. 1210-23) at the close of the fiscal year 1988-
 7 89 is hereby reappropriated for expenditure during the
 8 fiscal year 1989-90.

95—Railroad Maintenance Authority

(WV Code Chapter 29)

Acct. No. 5690

1	Personal Services	\$	—	\$	424,258
2	Annual Increment		—		5,364
3	Unclassified		450,000		386,561
4	Total	\$	450,000	\$	816,183

1 Total Title II, Section 1—

2 General Revenue — \$ 1,740,210,436

3 **Sec. 3. Appropriations from other funds.**—From
 4 the funds designated there are hereby appropriated
 5 conditionally upon the fulfillment of the provisions set
 6 forth in article two, chapter five-a of the code, the

7 following amounts, as itemized, for expenditure during
8 the fiscal year one thousand nine hundred ninety.

9 **Sec. 4. Appropriations of federal funds.**—In accor-
10 dance with article eleven, chapter four of the code, from
11 federal funds there are hereby appropriated condition-
12 ally upon the fulfillment of the provisions set forth in
13 article two, chapter five-a of the code the following
14 amounts, as itemized, for expenditure during the fiscal
15 year one thousand nine hundred ninety.

EXECUTIVE

*96—Treasurer's Office—
Abandoned and Unclaimed Property*

(WV Code Chapters 12 and 36)

Acct. No. 8000

TO BE PAID FROM SPECIAL REVENUE FUND

	Federal Funds Fiscal Year 1989-90	Other Funds Fiscal Year 1989-90
1 Personal Services	\$ —	\$ 122,259
2 Annual Increment	—	468
3 Employee Benefits	—	21,525
4 Unclassified	—	34,238
5 Total	\$ —	\$ 178,490

*97—Auditor's Office—
Land Department Operating Fund*

(WV Code Chapters 11A, 12 and 36)

Acct. No. 8120

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified—Total	\$ —	\$ 11,400
2 The total amount of this appropriation shall be paid		
3 from the special revenue fund out of fees and collections		
4 as provided by law.		

98—Department of Agriculture

(WV Code Chapter 19)

Acct. No. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	209,201
2	Employee Benefits		—		37,614
3	Unclassified		—		487,663
4	Total	\$	—	\$	734,478

5 The total amount of this appropriation shall be paid
 6 from a special revenue fund out of collections made by
 7 the department of agriculture as provided by law.

99—General John McCausland Memorial Farm

(WV Code Chapter 19)

Acct. No. 8194

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	\$	—	\$	75,921
2	Funds for the above appropriation shall be expended				
3	in accordance with article twenty-six, chapter nineteen				
4	of the code.				

DEPARTMENT OF ADMINISTRATION*100—Division of Finance and Administration—
Revolving Fund*

(WV Code Chapter 5A)

Acct. No. 8140

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	700,509
2	Annual Increment		—		15,768
3	Employee Benefits		—		138,743
4	Unclassified		—		633,560
5	Total	\$	—	\$	1,488,580

6 The total amount of this appropriation shall be paid
 7 from a special revenue fund as provided by article two,
 8 chapter five-a of the code.

9 The above appropriation includes salaries and operat-
10 ing expenses.

11 There is hereby appropriated from this fund, in
12 addition to the above appropriation, the necessary
13 amount for the purchase of supplies for resale.

*101—Division of Finance and Administration—
Information System Services Division Fund*

(WV Code Chapter 5A)

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	2,969,343
2	Annual Increment		—		49,644
3	Employee Benefits		—		528,323
4	Unclassified		—		968,840
5	Total	\$	—	\$	4,516,150

6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of collections made by
8 the division of finance and administration as provided
9 by law.

10 There is hereby appropriated from this fund, in
11 addition to the above appropriation, the necessary
12 amount for the procurement of data processing equip-
13 ment, telecommunications expenses and supplies for
14 resale.

**DEPARTMENT OF COMMERCE, LABOR
AND ENVIRONMENTAL RESOURCES**

102—Division of Natural Resources

(WV Code Chapter 20)

Acct. No. 8300

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	4,356,331
2	Annual Increment		—		93,960
3	Employee Benefits		—		1,306,922
4	Unclassified		—		2,303,769

5	Land Purchase and		
6	Buildings	756,800	859,650
7	Total	\$ 756,800	\$ 8,920,632

8 Any unexpended balance remaining in the appropri-
 9 ation for Land Purchase and Buildings (account no.
 10 8300-09) at the close of the fiscal year 1988-89 is hereby
 11 reappropriated for expenditure during the fiscal year
 12 1989-90. Any unexpended balance remaining in the
 13 appropriation for Land Purchase and Building (account
 14 no. 8300-09) and Land Purchase and Building (account
 15 no. 8300-23) is reflected in the approved FY-88 Expen-
 16 diture Schedule and the June 1989 Financial Statement
 17 of the Division of Natural Resources and available for
 18 capital improvement and land purchase purposes is
 19 hereby reappropriated for expenditure in the Fiscal
 20 Year 1989-90, all in accordance with Section Thirty-
 21 Four, Article Two, Chapter Twenty of the Code.

22 The total amount of this appropriation shall be paid
 23 from a special revenue fund out of fees collected by the
 24 division of natural resources. Expenditures shall be
 25 limited to the amounts appropriated except for federal
 26 funds received and special funds collected.

103—Division of Banking

(WV Code Chapter 31A)

Acct. No. 8395

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 722,737
2	Annual Increment	—	5,580
3	Employee Benefits	—	127,350
4	Unclassified	—	435,969
5	Total	\$ —	\$ 1,291,636

104—Geological and Economic Survey

(WV Code Chapter 29)

Acct. No. 8589

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	\$ —	\$ 142,629
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- 2 The above appropriation shall be used in accordance
3 with section four, article two, chapter twenty-nine of the
4 code.

DEPARTMENT OF EDUCATION

105—State Department of Education— Veterans' Education

(WV Code Chapter 18)

Acct. No. 7979

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 101,336 \$ —

- 2 Expenditures from this appropriation shall not exceed
3 the amount to be reimbursed by the federal government.

- 4 Federal funds in excess of the amounts hereby approp-
5 riated may be made available by budget amendment
6 upon request of the state superintendent of schools and
7 the approval of the governor for any emergency which
8 might arise in the operation of this division during the
9 fiscal year.

DEPARTMENT OF EDUCATION AND THE ARTS

106—Board of Regents— Special Capital Improvement Fund

(WV Code Chapter 18)

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service—Total \$ — \$ 476,000

- 2 The total amount of this appropriation shall be paid
3 from the special capital improvement fund created in
4 section four, article twenty-four, chapter eighteen of the
5 code.

107—Board of Regents— State System Registration Fee— Special Capital Improvement Fund (Capital Improvement and Bond Retirement Fund)

(WV Code Chapter 18)

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$	—	\$	6,130,000
2	Capital Building Repairs				
3	& Alterations		—		4,500,000
4	(Supplements Operating				
5	Budgets of Colleges				
6	and Universities)				
7	Miscellaneous Projects		—		1,300,000
8	Total	\$	—	\$	11,930,000

9 Any unexpended balances remaining in prior years'
 10 and 1988-89 appropriations are hereby reappropriated
 11 for expenditure during the fiscal year 1989-90.

12 The total amount of this appropriation shall be paid
 13 from the special capital improvement fund created by
 14 section four, article twenty-four, chapter eighteen of the
 15 code. Projects are to be paid on a cash basis and made
 16 available from date of passage.

*108—Board of Regents—
 State System Registration Fee—
 Revenue Bond Construction Fund*

(WV Code Chapter 18)

Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

1	Capital Outlay	\$	—	\$	—0—
2	Marshall University				
3	Science Building				
4	Renovation		—		2,000,000
5	Fairmont State College				
6	Academic Building		—		6,500,000
7	West Virginia				
8	University Facilities				
9	Renovation		—		6,500,000
10	West Virginia				
11	Institute of Technology				
12	Science Hall				
13	Renovation		—		2,000,000

14	West Virginia		
15	Northern Community		
16	College Building		
17	Renovation	—	1,000,000
18	Bluefield State		
19	College Dickason		
20	Hall Renovation	—	500,000
21	West Liberty		
22	State College Shaw		
23	Hall Renovation	—	500,000
24	Concord College		
25	Administration Building/		
26	Science Hall		
27	Renovation	—	700,000
28	West Virginia		
29	School of Osteopathic		
30	Medicine Building		
31	Renovation	—	2,500,000
32	West Virginia		
33	State College		
34	Fleming Hall		
35	Renovation	—	500,000
36	State-Wide Computer		
37	System Upgrade.....	—	2,300,000
38	Total	\$ —	\$ 25,000,000

39 The total amount of this appropriation shall be paid
 40 from the proceeds of revenue bonds issued pursuant to
 41 section four, article twenty four, chapter eighteen of the
 42 code. Projects are to be made available from the date
 43 of passage.

44 Any unexpended balances remaining in prior years'
 45 and the 1988-89 appropriations are hereby reappropri-
 46 ated and reauthorized for expenditure during the
 47 fiscal year 1989-90.

*109—Board of Regents—
 State System Tuition Fee—
 Special Capital Improvement Fund
 (Capital Improvement and
 Bond Retirement Fund)
 (WV Code Chapter 18)*

Acct. No. 8855

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$	—	\$ 11,150,000
2	Building and			
3	Campus Renewal		—	7,000,000
4	Dental School		—	1,200,000
5	WVU Computer		—	1,000,000
6	West Virginia			
7	Northern Community			
8	College New			
9	Martinsville		—	1,900,000
10	Total	\$	—	\$ 22,250,000

11 Any unexpended balances remaining in prior years'
 12 and 1988-89 appropriations are hereby reappropriated
 13 for expenditure during the fiscal year 1989-90.

14 The total amount of this appropriation shall be paid
 15 from the special capital improvement fund created by
 16 article twelve-b, chapter eighteen of the code. Projects
 17 are to be paid on a cash basis and made available from
 18 date of passage.

19 The above appropriation is intended to include repairs
 20 and alterations for Jackson's Mill.

*110—Board of Regents—
 State System Tuition Fee—
 Revenue Bond Construction Fund*

(WV Code Chapter 18)

Acct. No. 8860

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years'
 2 and 1988-89 appropriations are hereby reappropriated
 3 for expenditure during the fiscal year 1989-90.

*111—West Virginia University—
 Schools of Health Sciences*

(WV Code Chapter 18)

Acct. No. 9280

TO BE PAID FROM MEDICAL SCHOOL FUND

1	Unclassified—Total	\$	—	\$ 14,664,430
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2 Any unexpended balances remaining in the appropri-
3 ations for Capital Outlay (account no. 9280-08) and in
4 the 1988-89 appropriation for the West Virginia
5 University—Medical Center at the close of the fiscal
6 year 1988-89 are hereby reappropriated for expenditure
7 during the fiscal year 1989-90.

**DEPARTMENT OF HEALTH
AND HUMAN RESOURCES**

112—Board of Barbers and Beauticians

(WV Code Chapters 16 and 30)

Acct. No. 8220

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	126,327
2	Annual Increment		—		3,492
3	Employee Benefits		—		22,705
4	Unclassified		—		90,041
5	Total	\$	—	\$	242,565

6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of collections made by
8 the board of barbers and beauticians as provided by law.

113—Hospital Finance Authority

(WV Code Chapter 16)

Acct. No. 8330

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	49,092
2	Annual Increment		—		437
3	Employee Benefits		—		8,632
4	Unclassified		—		70,245
5	Total	\$	—	\$	128,406

6 The total amount of this appropriation shall be paid
7 from the special revenue fund out of fees and collections

8 as provided by article twenty-nine-a, chapter sixteen of
9 the code.

10 Special funds in excess of the amount herein approp-
11 riated may be made available by budget amendment
12 upon request of the commissioner of finance and
13 administration and the approval of the governor.

*114—State Board of Rehabilitation
Division of Rehabilitation Services
West Virginia Rehabilitation
Center—Special Account*

(WV Code Chapter 18)

Acct. No. 8137

TO BE PAID FROM SPECIAL REVENUE FUND

1	Certification of the			
2	Rehabilitation Center	\$	—	\$ 200,000
3	Total	\$	—	\$ 200,000

*115—Division of Health—
Hospital Services Revenue Account
(Special Fund)*

(Capital Improvement, Renovation and Operation)

(WV Code Chapter 16)

Acct. No. 8500

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$	—	\$ —0—
2	Debt Service		—	3,400,000
3	Institutional Facilities			
4	Operations		—	14,000,000
5	Medley Placement		—	4,600,000
6	Total	\$	—	\$ 22,000,000

7 Any unexpended balance remaining in the appropri-
8 ation for hospital services revenue account at the close
9 of the fiscal year 1988-89 is hereby reappropriated for
10 expenditure during the fiscal year 1989-90, except the
11 following account numbers:

12 (Appropriation year '82): 8500-06, 8500-07, 8500-08,
13 8500-10, 8500-11, 8500-12 and 8500-13. (Appropriation

14 year '84): 8500-00, 8500-01, 8500-20, 8500-21, 8500-22,
 15 8500-23, 8500-24, 8500-25, 8500-26, 8500-27, 8500-28,
 16 8500-29, 8500-31, 8500-32, 8500-34 and 8500-35.
 17 (Appropriation year '85): 8500-00, 8500-01, 8500-21,
 18 8500-22, 8500-23, 8500-26, 8500-29, 8500-32, 8500-34,
 19 8500-38, 8500-39, 8500-41 and 8500-42. (Appropriation
 20 year '86): 8500-04, 8500-21, 8500-22, 8500-23, 8500-29,
 21 8500-32, 8500-38, 8500-40, 8500-44, 8500-45 and 8500-46.

22 The total amount of this appropriation shall be paid
 23 from the hospital services revenue account special fund
 24 created by section fifteen-a, article one, chapter sixteen
 25 of the code, and shall be used only for operating
 26 expenses and for improvements in connection with
 27 existing facilities, Medley and bond payments.

28 Projects are to be paid on a cash basis and made
 29 available from the date of passage. Items and projects
 30 of this appropriation are to begin as funds become
 31 available in the special fund or from bond proceeds.

32 Necessary funds from the above appropriation may be
 33 used for medical facilities operations, either in connec-
 34 tion with this account or in connection with the item
 35 designated Institutional Facilities Operations in the
 36 Consolidated Medical Services Fund (Account no. 4190).

116—Health Care Cost Review Authority

(WV Code Chapter 16)

Acct. No. 8564

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	548,081
2	Annual Increment		—		5,544
3	Employee Benefits		—		96,607
4	Unclassified		—		365,817
5	Total	\$	—	\$	1,016,049

6 The above appropriation is to be expended in accor-
 7 dance with and pursuant to the provisions of article
 8 twenty-nine-b, chapter sixteen of the code, and from the
 9 special revolving fund designated health care cost
 10 review fund.

117—Workers' Compensation Fund

(WV Code Chapter 23)

Acct. No. 9000

TO BE PAID FROM WORKERS' COMPENSATION FUND

1	Personal Services	\$	—	\$	7,976,803
2	Annual Increment		—		126,700
3	Employee Benefits		—		1,463,337
4	Unclassified		—		6,409,050
5	Employers' Excess				
6	Liability Fund		—		126,740
7	Total	\$	—	\$	16,102,630

8 There is hereby authorized to be paid out of the above
 9 appropriation, the amount necessary for the premiums
 10 on bonds given by the treasurer as bond custodian for
 11 the protection of the workers' compensation fund. This
 12 sum shall be transferred to the state board of insurance.

DEPARTMENT OF PUBLIC SAFETY*118—Regional Jail and Prison Authority*

(WV Code Chapter 31)

Acct. No. 8051

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	329,625
2	Annual Increment		—		2,808
3	Employee Benefits		—		62,563
4	Unclassified		—		194,864
5	Total	\$	—	\$	589,860

*119—Division of Public Safety—
Inspection Fees*

(WV Code Chapter 15)

Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	468,226
2	Annual Increment		—		1,404

3	Employee Benefits	—	114,535
4	Unclassified	—	152,510
5	Total	\$ —	\$ 736,675

6 The total amount of this appropriation shall be paid
 7 from the special revenue fund out of fees collected for
 8 inspection stickers as provided by law.

*120—Division of Public Safety—
 Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Acct. No. 8355

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	\$ —	\$ 642,000
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2 The total amount of this appropriation shall be paid
 3 from the special revenue fund out of receipts collected
 4 pursuant to sections nine-a and sixteen, article fifteen,
 5 chapter eleven of the code and paid into a revolving fund
 6 account in the state treasury.

121—Crime Victims Compensation Fund

(WV Code Chapter 14)

Acct. No. 8412

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 105,719
2	Annual Increment	—	468
3	Employee Benefits	—	18,368
4	Unclassified	700,000	43,125
5	Total	\$ 700,000	\$ 167,680

6 These funds are intended to be expended for court
 7 costs and administrative costs and federal reimburse-
 8 ment for compensation paid to crime victims.

DEPARTMENT OF TAX AND REVENUE

122—Agency of Insurance Commissioner

(WV Code Chapter 33)

Acct. No. 8016

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 925,412
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2	Annual Increment	—	10,654
3	Employee Benefits	—	235,550
4	Unclassified	—	525,924
5	Total	\$ —	\$ 1,697,540

6 The total amount of this appropriation shall be paid
 7 from a special revenue fund out of collections of fees and
 8 charges as provided by law.

123—Racing Commission

(WV Code Chapter 19)

Acct. No. 8080

TO BE PAID FROM SPECIAL REVENUE FUND

1 Medical Expenses—Total ... \$ — \$ 114,000

2 The total amount of this appropriation shall be paid
 3 from the special revenue fund out of collections of
 4 license fees and fines as provided by law.

5 No expenditures shall be made from this account
 6 except for hospitalization, medical care and/or funeral
 7 expenses for persons contributing to this fund.

*124—Office of Alcohol
 Beverage Control Commissioner*

(WV Code Chapter 60)

Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 7,784,493
2	Annual Increment	—	200,100
3	Employee Benefits	—	1,485,134
4	Unclassified	—	6,944,634
5	Total	\$ —	\$ 16,414,361

6 The total amount of this appropriation shall be paid
 7 from a special revenue fund out of liquor revenues.

8 The above appropriation includes the salary of the

9 commissioner, salaries of store personnel and store
 10 inspectors, store operating expenses and equipment, and
 11 salaries, expenses and equipment of administration
 12 offices.

13 There is hereby appropriated from liquor revenues, in
 14 addition to the appropriation, the necessary amount for
 15 the purchase of liquor as provided by law.

DEPARTMENT OF TRANSPORTATION

125—Division of Highways

(WV Code Chapters 17 and 17C)

Acct. No. 6700

TO BE PAID FROM STATE ROAD FUND

1	Maintenance, Expressway,		
2	Trunkline and Feeder	—	\$ 61,500,000
3	Maintenance, State		
4	Local Services	—	84,500,000
5	Maintenance, Contract		
6	Paving and Secondary		
7	Road Maintenance	—	50,750,000
8	Bridge Repair and		
9	Replacement	—	25,000,000
10	Industrial Access Road	—	1,899,000
11	Inventory Revolving	—	1,500,000
12	Equipment Revolving	—	17,514,000
13	General Operations	—	29,104,000
14	Annual Increment	—	206,000
15	Debt Service	—	81,300,000
16	Interstate Construction	—0—	50,000,000
17	Other Federal Aid Programs	—0—	140,000,000
18	Appalachian Program	—0—	38,000,000
19	Nonfederal Aid Construction	—	10,611,000
20	Highway Litter		
21	Control	—	1,930,000
22	Total	\$ —0—	\$ 593,814,000

23 The above appropriations are to be expended in
 24 accordance with the provisions of chapters seventeen
 25 and seventeen-c of the code.

26 The commissioner of highways shall have the author-
 27 ity to operate revolving funds within the state road fund
 28 for the operation and purchase of various types of
 29 equipment used directly and indirectly in the construc-
 30 tion and maintenance of roads and for the purchase of
 31 inventories and materials and supplies.

32 There is hereby appropriated within the above items
 33 sufficient money for the payment of claims, accrued or
 34 arising during this budgetary period, to be paid in
 35 accordance with sections seventeen and eighteen, article
 36 two, chapter fourteen of the code.

37 It is the intent of the Legislature to capture and match
 38 all federal funds available for expenditure on the
 39 Appalachian Highway system at the earliest possible
 40 time. Therefore, should amounts in excess of those
 41 appropriated be required for the purposes of Appalach-
 42 ian programs, funds in excess of the amount approp-
 43 riated may be made available upon recommendation of
 44 the Commissioner and approval of the Governor.
 45 Further, for the purpose of Appalachian programs,
 46 funds appropriated to line items may be transferred to
 47 other line items upon recommendation of the Commis-
 48 sioner and approval of the Governor.

126—Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 20 and 24)

Acct. No. 6710

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$	—	\$	2,371,460
2	Annual Increment		—		46,312
3	Employee Benefits		—		651,208
4	Unclassified		100,000		3,462,613
5	Total	\$	100,000	\$	6,531,593

127—Real Estate Commission

(WV Code Chapter 47)

Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	125,968
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2	Annual Increment	—	2,016
3	Employee Benefits	—	22,422
4	Unclassified	—	103,193
5	Total	\$ —	\$ 253,599

6 The total amount of this appropriation shall be paid
7 out of collections of license fees as provided by law.

MISCELLANEOUS BOARDS AND COMMISSIONS

128—Public Service Commission

(WV Code Chapter 24)

Acct. No. 8280

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 3,907,451
2	Annual Increment	—	41,000
3	Employee Benefits	—	618,138
4	Unclassified	93,700	1,769,848
5	Total	\$ 93,700	\$ 6,336,437

6 Any unexpended balance remaining in the appropri-
7 ation for Headquarters Building Development (account
8 no. 8280-10) at the close of the fiscal year 1988-89 is
9 hereby reappropriated for expenditure during the fiscal
10 year 1989-90.

11 The total amount of this appropriation shall be paid
12 from a special revenue fund out of collections for special
13 license fees from public service corporations as provided
14 by law.

129—Public Service Commission— Gas Pipeline Division

(WV Code Chapter 24B)

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 123,363
2	Annual Increment	—	1,296
3	Employee Benefits	—	21,764

4	Unclassified	119,600	75,016
5	Total	\$ 119,600	\$ 221,439

6 The total amount of this appropriation shall be paid
 7 from a special revenue fund out of receipts collected for
 8 or by the public service commission pursuant to and in
 9 the exercise of regulatory authority over pipeline
 10 companies as provided by law.

*130—Public Service Commission—
 Motor Carrier Division*

(WV Code Chapter 24A)

Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 1,116,885
2	Annual Increment	—	15,915
3	Employee Benefits	—	197,106
4	Unclassified	468,800	430,523
5	Total	\$ 468,800	\$ 1,760,429

6 The total amount of this appropriation shall be paid
 7 from a special revenue fund out of receipts collected for
 8 or by the public service commission pursuant to and in
 9 the exercise of regulatory authority over motor carriers
 10 as provided by law.

*131—Public Service Commission—
 Consumer Advocate*

(WV Code Chapter 24)

Acct. No. 8295

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 308,195
2	Annual Increment	—	1,260
3	Employee Benefits	—	53,814
4	Unclassified	—	269,242
5	Total	\$ —	\$ 632,511

6 The total amount of this appropriation shall be paid
 7 from a special revenue fund out of collections made by
 8 the public service commission.

1 **Sec. 5. Awards for claims against the state.—**

2 There are hereby appropriated, for the remainder of the
3 fiscal year 1988-89 and to remain in effect until June
4 30, 1990 from the funds as designated in the amount as
5 specified and for the claimant as named in enrolled
6 house bill no. 2408, acts, Legislature, regular session,
7 1989—crime victims compensation fund of \$166,000.00
8 for payment of claims against the state.

9 There are hereby appropriated, for the reminder of
10 the fiscal year 1988-89 and to remain in effect until June
11 30, 1990, from the funds as designated, in the amounts
12 as specified and for the claimants as named in enrolled
13 senate bill no. 615, acts, Legislature, regular session,
14 1989—state road funds of \$738,133.83, special revenue
15 funds of \$784,608.24, federal funds of \$5,695.50 and
16 workers' compensation funds of \$2,709.30.

17 There is hereby appropriated, for the reminder of the
18 fiscal year 1988-89 and to remain in effect until June
19 30, 1990, from the fund as designated, in the amounts
20 as specified and for the claimants as named in enrolled
21 senate bill no. 615 and in enrolled house bill no. 2426,
22 acts, Legislature, regular session, 1989—general re-
23 venue funds of \$503,407.02.

1 **Sec. 6. Supplemental and deficiency appropri-**

2 **tions.—**From the state fund, general revenue, except as
3 otherwise provided, there are hereby appropriated the
4 following amounts, as itemized, for expenditure during
5 the fiscal year one thousand nine hundred eighty-nine
6 to supplement the 1988-89 appropriations, and to be
7 available for expenditure upon date of passage.

8 Any unexpended balances remaining in the appropri-
9 ations at the close of the fiscal year 1988-89 are hereby
10 reappropriated for expenditure during the fiscal year
11 1989-90.

132—Governor's Office

Acct. No. 1200

1	Other Personal Services.....	\$	—	\$	83,450
2	Current Expenses		—		77,500
3	Equipment		—		6,350
4	Total	\$	—	\$	167,300

*133—Governor's Office—
Civil Contingent Fund*

Acct. No. 1240

1	Unclassified	\$	—	\$	750,000
2	Buffalo Creek Claim		—		1,789,922
3	Total	\$	—	\$	2,539,922

*134—State Board of Risk and
Insurance Management*

Acct. No. 2250

1	Unclassified—Total	\$	—	\$	3,000,000
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135—West Virginia Board of Regents (Control)

Acct. No. 2790

1	Unclassified—Total	\$	—	\$	2,500,000
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136—West Virginia Board of Regents

Acct. No. 2800

1	Unclassified—Total	\$	—	\$	165,000
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137—State Department of Education

Acct. No. 2860

1	Tuition Waiver—Total	\$	—	\$	13,079
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138—Teachers Retirement System

Acct. No. 2980

1	Unclassified—Total	\$	—	\$	—0—
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139—West Virginia Library Commission

Acct. No. 3500

1	Unclassified—Total	\$	—	\$	318,934
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140—Department of Human Services

Acct. No. 4050

1	Unclassified	\$	—	\$	5,000,000
2	Medical Services		—		25,851,083
3	Total	\$	—	\$	30,851,083

141—Consolidated Medical Services Fund

Acct. No. 4190

1	Institutional Facilities	\$	—	\$	4,000,000
2	ICF/MR Match		—		4,000,000
3	Total	\$	—	\$	8,000,000

142—Department of Energy

Acct. No. 4775

1	Unclassified—Total	\$	—	\$	135,000
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*143—West Virginia Public
Legal Services Council*

Acct. No. 5900

1	Unclassified—Total	\$	—	\$	1,800,000
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144—Human Rights Commission

Acct. No. 5980

1	Unclassified—Total	\$	—	\$	74,850
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*145—West Virginia
Public Employees Retirement System*

Acct. No. 6140

1	Unclassified—Total	\$	—	\$	—0—
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*146—West Virginia Public
Employees Insurance Agency*

Acct. No. 6150

1	Unclassified—Total	\$	—	\$	7,750,000
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- 1 **Sec. 7. Deposit of net profits of lottery.** Net profits
2 of the lottery, not to exceed eighteen million dollars, are
3 to be deposited by the lottery director to the following
4 accounts in the amounts indicated. The auditor shall
5 prorate each deposit of net profits by the lottery director
6 among the following accounts not to exceed the amounts
7 indicated. Net profits in excess of eighteen million
8 dollars are not subject to spending authorized by article
9 two, chapter five-a of the code.

*147—Board of Trustees of the
University System of West Virginia
Board of Directors of the
State College System
(Board of Regents)*

(WV Code Chapter 18B)

Acct. No. 8825

TO BE PAID FROM LOTTERY NET PROFITS

1 Unclassified \$ — \$ 2,160,000

148—State Department of Education

(WV Code Chapters 18 and 18A)

Acct. No. 8243

TO BE PAID FROM LOTTERY NET PROFITS

1 Elementary Computer
2 Education \$ — \$ 7,020,000

149—Department of Health and Human Resources

(WV Code Chapters 9, 48 and 49)

Acct. No. 9132

TO BE PAID FROM LOTTERY NET PROFITS

1 Catastrophic Health Care for
2 Senior Citizens \$ — \$ 1,800,000

150—Division of Commerce

(WV Code Chapter 5B)

Acct. No. 8546

TO BE PAID FROM LOTTERY NET PROFITS

1 Unclassified \$ — \$ 7,020,000

1 **Sec. 8. Appropriations and reappropriations—**
2 **Revenue sharing trust fund.**—Any unexpended balan-
3 ces to appropriations made by the 1979, 1980, 1981,
4 1982, 1983, 1984, 1985, 1986, 1987, and 1988 budget acts
5 and any supplementary transfers or redesignations
6 made by the above-listed budget acts from the revenue

- 7 sharing trust fund at the close of the fiscal year 1988-
8 89 are hereby reappropriated for expenditure during
9 the fiscal year 1989-90.

151—West Virginia Department of Highways

Acct. No. 9705

- 1 Chief Mingo Recreation
2 Park Capital Outlay \$ — \$ 50,000

- 1 **Sec. 9. Appropriations from federal block**
2 **grants.**—The following items are hereby appropriated
3 from federal block grants to be available for expendi-
4 ture during the fiscal year 1989-90.

*152—Office of Community and Industrial
Development—Community Development*

Acct. No. 8029

TO BE PAID FROM FEDERAL FUNDS

- 1 Unclassified—Total \$ 15,288,000

*153—Office of Community and Industrial
Development—Job Partnership Training Act*

Acct. No. 8030

TO BE PAID FROM FEDERAL FUNDS

- 1 Unclassified—Total \$ 45,954,217

*154—Office of Community and Industrial
Development—Community Service*

Acct. No. 8031

TO BE PAID FROM FEDERAL FUNDS

- 1 Unclassified—Total \$ 6,323,664

*155—Office of Community and Industrial
Development—Justice Assistance*

Acct. No. 8032

TO BE PAID FROM FEDERAL FUNDS

- 1 To Local Entities—Total \$ 320,000

*156—State Department of Education—
Education Grant*

Acct. No. 8242

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 44,834,122

*157—Division of Health—
Maternal and Child Health*

Acct. No. 8502

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 7,350,340

*158—Division of Health—
Alcohol, Drug Abuse and Mental Health*

Acct. No. 8503

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 7,500,000

159—Division of Health—Preventive Health

Acct. No. 8506

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 1,499,572

*160—Division of Health—
Mental Health Services
for the Homeless*

Acct. No. 8508

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 400,000

*161—Division of Health—
Alcohol and Drug Abuse
Treatment and Rehabilitation*

Acct. No. 8510

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 750,000

*162—Division of Human Services—
Energy Assistance*

Acct. No. 9147

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 13,851,068

*163—Division of Human Services—
Social Services*

Acct. No. 9161

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 21,375,039

1 **Sec. 10. Appropriations from surplus revenue.—**
2 The following items are hereby appropriated from the
3 state fund, general revenue, and are to be available for
4 expenditure during the fiscal year 1989-90 out of
5 surplus funds only, subject to the terms and conditions
6 set forth in this section.

7 It is the intent and mandate of this Legislature that
8 the following appropriations made by this section shall
9 be payable only from the surplus accrued as of June 30,
10 1989.

11 In the event that the surplus revenues as of June 30,
12 1989 are not sufficient to meet all of the appropriations
13 made by this section, then the appropriations shall be
14 available, only to the extent of the total actual surplus
15 accrued as of June 30, 1989.

164—Division of Finance and Administration

Acct. No. 2100

1 Urban Mass Transit
2 Matching Funds \$ 1,000,000

165—Governor's Office-Debt Service

Acct. No. 1250

1 Loan Payback to Consolidated
2 Investment Fund \$ 8,000,000

166—*West Virginia Public Employees
Insurance Agency*

Acct. No. 6150

1 PEIA State Contribution \$ 13,000,000

1 **Sec. 11. Special revenue appropriations.**—There
2 are hereby appropriated for expenditure during the
3 fiscal year one thousand nine hundred ninety appropri-
4 ations made by general law from special revenue which
5 are not paid into the state fund as general revenue under
6 the provisions of section two, article two, chapter twelve
7 of the code: *Provided*, That none of the money so
8 appropriated by this section shall be available for
9 expenditure except in compliance with and in conform-
10 ity to the provisions of articles two and three, chapter
11 twelve, and article two, chapter five-a of the code, unless
12 the spending unit has filed with the director of the
13 budget, the auditor and the legislative auditor prior to
14 the beginning of each fiscal year:

15 (a) An estimate of the amount and sources of all
16 revenues accruing to such fund;

17 (b) A detailed expenditure schedule showing for what
18 purposes the fund is to be expended.

1 **Sec. 12. State improvement fund appropri-**
2 **tions.**—Bequests or donations of nonpublic funds,
3 received by the governor on behalf of the state during
4 the fiscal year one thousand nine hundred ninety, for the
5 purpose of making studies and recommendations
6 relative to improvements of the administration and
7 management of spending units in the executive branch
8 of state government, shall be deposited in the state
9 treasury in a separate account therein designated state
10 improvement fund.

11 There are hereby appropriated all moneys so depos-
12 ited during the fiscal year one thousand nine hundred
13 ninety to be expended as authorized by the governor, for
14 such studies and recommendations which may encom-
15 pass any problems of organization, procedures, systems,
16 functions, powers or duties of a state spending unit in

17 the executive branch, or the betterment of the economic,
18 social, educational, health and general welfare of the
19 state or its citizens.

1 **Sec. 13. Specific funds and collection accounts.—**

2 A fund or collection account which by law is dedicated
3 to a specific use is hereby appropriated in sufficient
4 amount to meet all lawful demands upon the fund or
5 collection account and shall be expended according to
6 the provisions of article three, chapter twelve of the
7 code.

1 **Sec. 14. Appropriations for refunding erroneous**
2 **payment.—** Money that has been erroneously paid into
3 the state treasury is hereby appropriated out of the fund
4 into which it was paid, for refund to the proper person.

5 When the officer authorized by law to collect money
6 for the state finds that a sum has been erroneously paid,
7 he shall issue his requisition upon the auditor for the
8 refunding of the proper amount. The auditor shall issue
9 his warrant to the treasurer and the treasurer shall pay
10 the warrant out of the fund into which the amount was
11 originally paid.

1 **Sec. 15. Sinking fund deficiencies.—**There is
2 hereby appropriated to the governor a sufficient amount
3 to meet any deficiencies that may arise in the mortgage
4 finance bond insurance fund of the West Virginia
5 housing development fund which is under the supervi-
6 sion and control of the municipal bond commission as
7 provided by section twenty-b, article eighteen, chapter
8 thirty-one of the code, or in the funds of the municipal
9 bond commission because of the failure of any state
10 agency for either general obligations or revenue bonds
11 or any local taxing district for general obligation bonds
12 to remit funds necessary for the payment of interest and
13 sinking fund requirements. The governor is authorized
14 to transfer from time to time such amounts to the
15 municipal bond commission as may be necessary for
16 these purposes.

17 The municipal bond commission shall reimburse the
18 state of West Virginia through the governor from the
19 first remittance collected from the West Virginia

20 housing development fund or from any state agency or
21 local taxing district for which the governor advanced
22 funds, with interest at the rate carried by the bonds for
23 security or payment of which the advance was made.

1 **Sec. 16. Appropriations to pay costs of publica-**
2 **tion of delinquent corporations.**—There is hereby
3 appropriated out of the state fund, general revenue, out
4 of funds not otherwise appropriated, to be paid upon
5 requisition of the auditor and/or the governor, as the
6 case may be, a sum sufficient to pay the cost of
7 publication of delinquent corporations as provided by
8 sections eighty-four and eighty-six, article twelve,
9 chapter eleven of the code.

1 **Sec. 17. Appropriations for local governments.**—
2 There are hereby appropriated for payment to counties,
3 districts and municipal corporations such amounts as
4 will be necessary to pay taxes due counties, districts and
5 municipal corporations and which have been paid into
6 the treasury:

- 7 (a) For redemption of lands;
8 (b) By public service corporations;
9 (c) For tax forfeitures.

1 **Sec. 18. Total appropriations.**—Where only a total
2 sum is appropriated to a spending unit, the total sum
3 shall include personal services, annual increment,
4 current expenses, repairs and alterations, equipment
5 and capital outlay, where not otherwise specifically
6 provided and except as otherwise provided in TITLE I—
7 GENERAL PROVISIONS, Sec. 3.

1 **Sec. 19. General school fund.**—The balance of the
2 proceeds of the general school fund remaining after the
3 payment of the appropriations made by this act is
4 appropriated for expenditure in accordance with section
5 sixteen, article nine-a, chapter eighteen of the code.

TITLE III. ADMINISTRATION.

- §1. Appropriations conditional.
§2. Constitutionality.

1 **Section 1. Appropriations conditional.**—The ex-

2 penditure of the appropriations made by this act, except
3 those appropriations made to the legislative and judicial
4 branches of the state government, are conditioned upon
5 the compliance by the spending unit with the require-
6 ments of article two, chapter five-a of the code.

7 Where spending units or parts of spending units have
8 been absorbed by or combined with other spending
9 units, it is the intent of this act that appropriations and
10 reappropriations shall be to the succeeding or later
11 spending unit created unless otherwise indicated.

1 **Sec. 2. Constitutionality.**—If any part of this act is
2 declared unconstitutional by a court of competent
3 jurisdiction, its decision shall not affect any portion of
4 this act which remains, but the remaining portion shall
5 be in full force and effect as if the portion declared
6 unconstitutional had never been a part of the act.

CHAPTER 11

(H. B. 2586—By Delegates M. Burke and Murphy)

[Passed March 29, 1989; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the West Virginia Racing Commission, as appropriated by chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the Budget Bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 4950, chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, be supplemented, amended and transferred to read as follows:

1 TITLE II—APPROPRIATIONS.
 2 Section 1. Appropriations From General Revenue.

3 BUSINESS AND INDUSTRIAL RELATIONS

4 61—*West Virginia Racing Commission*

5 (WV Code Chapter 19)

6 Account No. 4950

7	1	Personal Services	\$_____	\$1,193,412
8	2	Annual Increment.....	\$_____	6,588
9	3	Unclassified	\$_____	100,000
10		Total	\$_____	\$1,300,000

11 The purpose of this supplementary appropriation bill
 12 is to supplement, amend and transfer certain moneys
 13 between items of the existing appropriation for the
 14 designated spending unit. The amounts as itemized for
 15 expenditure during the fiscal year one thousand nine
 16 hundred eighty-nine shall be made available for
 17 expenditure upon the effective date of this bill.

CHAPTER 12

(S. B. 449—Originating in the Committee on Finance)

[Passed April 4, 1989; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of all federal funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-nine, to the Geological and Economic Survey, Account No. 5200, supplementing chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the budget bill.

WHEREAS, The Governor has established the receipt and availability of federal funds for the extension of a continuing program, now available for expenditure in the current fiscal

year of 1988-89, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 5200, chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the budget bill, be supplemented by adding the following sum to the designated line item:

- 1 **TITLE 2. APPROPRIATIONS.**
2 **Section 2. Appropriation of federal funds.**
3 **CONSERVATION AND DEVELOPMENT**
4 *69—Geological and Economic Survey*
5 (WV Code Chapter 29)
6 Account No. 5200
7 3 Unclassified \$50,000
8 The purpose of this supplementary appropriation bill
9 is to supplement this account in the budget bill for fiscal
10 year 1988-89 by adding to this existing line item an
11 amount to be used for the continuation of the coal
12 availability program in cooperation with the U.S.
13 Department of the Interior.

CHAPTER 13

(Com. Sub. for S. B. 368—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed March 17, 1989; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all state road funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-nine, to the West Virginia Department of Highways, Account No. 6700, supplementing chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated February 13, 1989, wherein on page XIV thereof are set forth the revenues and expenditures of the State Road Fund, including fiscal year 1988-1989; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the state road fund available for further appropriation during the fiscal year 1988-1989, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,

Be it enacted by the Legislature of West Virginia:

That the total appropriations from the state road fund to the West Virginia Department of Highways, Account No. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-nine, as appropriated by chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the budget bill, be supplemented, amended and thereafter read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 3. Appropriations from other funds.

3 Section 4. Appropriations of federal funds.

4 86—West Virginia Department of Highways

5 (WV Code Chapters 17 and 17C)

6 Account No. 6700

7 TO BE PAID FROM STATE ROAD FUND

		Federal	Other
		Funds	Funds
		Fiscal	Fiscal
		Year	Year
		1988-89	1988-89
13	1 Maintenance,		
14	Expressway,		
15	2 Trunkline and Feeder \$	—	\$ 56,100,000
16	3 Maintenance, State		
17	4 Local Services	—	79,080,000
18	5 Maintenance, Contract		
19	6 Paving and		
20	Secondary Road		
21	7 Maintenance.....	—	41,268,000

22	8	Bridge Repair		
23	9	and Replacement	—	15,500,000
24	10	Inventory Revolving ...	—	1,500,000
25	11	Equipment Revolving ..	—	15,750,000
26	12	General Operations	—	28,125,000*
27	13	Annual Increment	—	228,000
28	14	Debt Service.....	—	120,800,000
29	15	Interstate Construction	—	50,000,000
30	16	Other Federal		
31	17	Aid Programs	—	145,000,000
32	18	Appalachian Program	—	30,500,000
33	19	Nonfederal Aid		
34	20	Construction.....	—	10,066,000
35	21	Highway Litter		
36	22	Control.....	—	1,900,000
37	23	Early Retirement		
38	24	Transfer of Funds ...	—	3,962,000
39	26	TOTAL	\$ —	\$599,779,000

40 *Includes salary of Commissioner at \$47,500 per
41 annum.

42 The purpose of this supplementary appropriation bill
43 is to supplement and amend the existing items in the
44 aforesaid account for expenditure in the fiscal year of
45 1988-1989, and to reflect the new total spending
46 authority of the spending unit for such fiscal year. Such
47 increased amounts shall be available for expenditure
48 upon the effective date of this bill.

CHAPTER 14

(S. B. 627—Originating in the Committee on Finance)

[Passed April 7, 1989; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire a certain unexpended amount of Account No. 8016-99, Insurance Commissioner, as appropriated by chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the budget bill, and transferring such amount to the general revenue fund.

Be it enacted by the Legislature of West Virginia:

That the sum of one million dollars of the balance in Account No. 8016-99, Insurance Commissioner, including balances carried forward on the first day of July, one thousand nine hundred eighty-eight, available for expenditure in the current fiscal year 1988-1989, as appropriated by chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the budget bill, be supplemented, amended, reduced and caused to expire, and that said sum be transferred to the state fund, general revenue, and be available for other and further appropriation upon the effective date of this bill.

The purpose of this supplementary appropriation is to supplement, amend, reduce and cause to expire out of the aforesaid account the sum of one million dollars; to transfer this sum into the general revenue fund, and to make such sum available for other and further appropriation and expenditure immediately upon the effective date of this bill.

CHAPTER 15

(H. B. 2869—By Delegates Farley and Murphy)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire certain unexpended amounts of Account No. 8280-99, Public Service Commission; Account No. 8285-99, Public Service Commission-Gas Pipeline Division; and Account No. 8290-99, Public Service Commission-Motor Carrier Division, as appropriated by chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the budget bill, and transferring such amount to the Account No. 9155-67, medical services program, Department of Human Services.

Be it enacted by the Legislature of West Virginia:

- 1 That the sum of two hundred thirty-eight thousand
- 2 three hundred fourteen dollars of the balance in Account
- 3 No. 8280-99, Public Service Commission; the sum of
- 4 thirty thousand six hundred seventeen dollars of the

5 balance in Account No. 8285-99, Public Service Commis-
6 sion-Gas Pipeline Division; and the sum of two hundred
7 seventy-seven thousand seven hundred sixty-six dollars
8 of the balance in Account No. 8290-99, Public Service
9 Commission-Motor Carrier Division, including balances
10 in each of these accounts carried forward on the first
11 day of July, one thousand nine hundred eighty-eight,
12 available for expenditure in the current fiscal year 1988-
13 1989, as appropriated by chapter two, acts of the
14 Legislature, second extraordinary session, one thousand
15 nine hundred eighty-eight, known as the budget bill, be
16 supplemented, amended, reduced and caused to expire,
17 and that said sums be transferred to Account No. 9155-
18 67, medical services program, Department of Human
19 Services and be available for expenditure for payment
20 of medical services upon the effective date of this bill.

21 The purpose of this supplementary appropriation is to
22 supplement, amend, reduce and cause to expire out of
23 the aforesaid accounts the total sum of five hundred
24 forty-six thousand six hundred ninety-seven dollars to
25 transfer this sum into the medical service program of
26 the Department of Human Services and to make such
27 sum available for expenditure immediately upon the
28 effective date of this act.

CHAPTER 16

(S. B. 188—Originating in the Committee on Finance)

[Passed April 1, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to expiration of appropriations; and clarifying authority of the Legislature to expire appropriations prior to the end of a fiscal year.

Be it enacted by the Legislature of West Virginia:

That section twelve, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. APPROPRIATIONS AND EXPENDITURES.**§12-3-12. Expiration of unexpended appropriations.**

1 Every appropriation which is payable out of the
2 general revenue, or so much thereof as may remain
3 undrawn at the end of the year for which made, shall
4 be deemed to have expired at the end of the year for
5 which it is made, and no warrant shall thereafter be
6 issued upon it: *Provided*, That warrants may be drawn
7 through the thirty-first day of July after the end of the
8 year for which the appropriation is made if the warrants
9 are in payment of bills for such year and have been
10 encumbered by the budget office prior to July first; but
11 appropriations for buildings and land or capital outlay
12 shall remain in effect, and shall not be deemed to have
13 expired until the end of three years after the passage
14 of the act by which such appropriations are made:
15 *Provided, however*, That if such thirty-first day of July
16 is on Saturday, then warrants may only be drawn
17 through the Friday immediately preceding such Satur-
18 day, but if such thirty-first day of July is on Sunday,
19 the warrants may be drawn through the Monday
20 immediately following such Sunday.

21 The Legislature may expire or provide for the
22 expiration of any appropriation prior to the end of the
23 fiscal year for which it is made.

CHAPTER 17

(H. B. 2115—By Delegates Roop and Kiss)

[Passed March 21, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the selection of deputy assessors.

Be it enacted by the Legislature of West Virginia:

That section three, article two, chapter eleven of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. ASSESSORS.

§11-2-3. Selection of deputy assessors.

1 The deputy assessors, including the transfer and office
2 deputies, shall be residents and voters in the county:
3 *Provided*, That a deputy assessor whose primary
4 responsibility is that of updating the assessor's maps
5 may be a resident and voter of a contiguous county of
6 this state. The deputy assessors shall be appointed by the
7 assessor with the advice and consent of the county
8 commission, and may be removed at any time in the
9 discretion of the assessor. Vacancies occurring from any
10 cause in the office of any deputy assessor shall be filled
11 by the assessors.

CHAPTER 18

(H. B. 2674—By Delegates Metheny and Criss)

[Passed April 4, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight-a, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article eight-b of said chapter, all relating to permitting the acquiring of a state bank by an out-of-state holding company, and to allow the banking commissioner to evaluate and investigate a bank holding company so as to permit the holding company to perform financially related services.

Be it enacted by the Legislature of West Virginia:

That section one, article eight-a, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section four, article eight-b of said chapter be amended and reenacted, all to read as follows:

CHAPTER 31A. BANKS AND BANKING.

Article**8A. Acquisition of Bank Shares.****8B. Community Reinvestment Act.****ARTICLE 8A. ACQUISITION OF BANK SHARES.****§31A-8A-1. Legislative findings and purpose.**

1 After a review of the structure of banking organiza-
2 tions in the state of West Virginia and after full
3 consideration of the complex issues involved, the
4 Legislature hereby finds and determines that:

5 (a) Well managed and financially sound banking
6 institutions are essential to the financial well-being of
7 the citizens, and the promotion of the future economic
8 and industrial growth and development of this state;

9 (b) The formation of bank holding companies will
10 strengthen and supplement traditional banking services
11 and facilitate the development of the type of banking
12 institutions that are necessary for the economic and
13 industrial growth and development of this state;

14 (c) It is in the best interests of this state and its
15 citizens for the board to have the power and authority
16 to disapprove the acquisition of a bank by a bank
17 holding company when the board determines that such
18 acquisition would result in a monopoly, substantially
19 lessen competition, or be contrary to the best interests
20 of the shareholders or customers of the bank involved;
21 and

22 (d) The deposits of the citizens of this state are a
23 substantial and valuable resource which should serve
24 the economic and industrial growth and development
25 needs, and the consumer needs of the citizens of this
26 state; and since the board could not effectively make a
27 determination that the control of deposits of the citizens
28 of this state by bank holding companies with any
29 banking subsidiaries located outside this state would be
30 used for the above enumerated local needs of this state's
31 citizenry, a bank holding company with any bank
32 subsidiary located outside this state shall be prohibited
33 from acquiring, directly or indirectly, five percent or
34 more of the interest in, or assets of, any bank or bank

35 holding company located in this state, unless acquired
36 pursuant to section seven of this article.

ARTICLE 8B. COMMUNITY REINVESTMENT ACT.

§31A-8B-4. Assessment of the institution's reinvestment in the community.

1 In connection with its examination or investigation of
2 a banking institution or bank holding company, the
3 commissioner or board shall:

4 (a) Assess the institution's record of meeting the
5 credit needs of its entire community, including low-and
6 moderate-income neighborhoods, consistent with the
7 safe and sound operation of such institution; and

8 (b) Take such record into account in its evaluation of
9 an application for a deposit facility or for permission to
10 engage in financially related services by such institu-
11 tion.

CHAPTER 19

(H. B. 2015—By Delegate M. Burke)

[Passed February 27, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article two-f, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia beef industry program; repealing the "Beef Check-off Act of 1983" which authorized the Beef Industry Self-Improvement Assessment Program.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating West Virginia beef industry self-improvement assessment program.

1 That article two-f, chapter nineteen of the code of
2 West Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.

CHAPTER 20

(H. B. 2755—By Delegates Farley and R. Burk)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to repeal sections six, seven, eight, nine and ten, article eight, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four and five, article eight, chapter twenty-nine of said code, all relating to the Blennerhassett historical park commission; making Blennerhassett historical park a state park; creating the Blennerhassett historical state park commission as an advisory commission; transferring all employee positions, assets, real and personal property, debts, liabilities, powers and duties of the former Blennerhassett historical park commission to the division of commerce as of the first day of July, one thousand nine hundred eighty-nine; and providing for civil service coverage for former commission employees.

Be it enacted by the Legislature of West Virginia:

That sections six, seven, eight, nine and ten, article eight, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, four and five of said article be amended and reenacted, all to read as follows:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 8. BLANNERHASSETT HISTORICAL PARK COMMISSION.

- §29-8-1. Legislative findings.
- §29-8-2. Blennerhassett historical state park commission established; members; terms; meeting; quorum; compensation; expenses.
- §29-8-3. General powers of division of commerce with respect to the Blennerhassett historical state park.
- §29-8-4. Duties of division of commerce with respect to the development of Blennerhassett Island.
- §29-8-5. Cooperation of state agencies and local government with Blennerhassett historical state park commission and division of commerce; powers of local government with respect to development.

§29-8-1. Legislative findings.

1 The Legislature hereby finds and declares that:

2 (1) Blennerhassett Island, situate in the Ohio River
3 near the city of Parkersburg, is a significant historical,
4 natural and archaeological resource of importance to
5 this state and the nation;

6 (2) A well-planned and executed program for the
7 development of educational, cultural and recreational
8 attractions related to events known and believed to have
9 occurred on and near scenic Blennerhassett Island will
10 be of great benefit to all the people of this state and
11 constitutes a most worthy public undertaking; and

12 (3) The primary responsibility for the planning and
13 execution of such a program rests upon the state of West
14 Virginia, while the secondary responsibility for develop-
15 ment rests upon private and other public resources.

§29-8-2. Blennerhassett historical state park commission established; members; terms; meeting; quorum; compensation; expenses.

1 As of the first day of July, one thousand nine hundred
2 eighty-nine, there is established within the division of
3 commerce the Blennerhassett historical state park
4 commission. As of said date, all assets, real and personal
5 property, debts, liabilities, duties, powers and authority
6 of the Blennerhassett historical park commission are
7 hereby transferred to the division of commerce. The
8 Blennerhassett historical state park commission shall be
9 maintained as an advisory commission as hereinafter
10 provided. The commission shall be composed of ten
11 members who shall be citizens and residents of this
12 state, appointed by the governor for terms of four years,
13 by and with the advice and consent of the Senate:
14 *Provided*, That the terms of all members previously
15 appointed to the Blennerhassett historical park commis-
16 sion prior to the amendment and reenactment of this
17 section shall continue for the periods originally speci-
18 fied, and no such member serving as of the effective date
19 of such amendment and reenactment need be reap-
20 pointed.

21 Each member shall be qualified to carry out the
22 functions of the commission under this article by reason
23 of his special interest, training, education or experience.

24 No person shall be eligible to appointment as a
25 member who is an officer or member of any political
26 party executive committee; or the holder of any other
27 public office or public employment under the United
28 States government or the government of this state or a
29 political subdivision of this state. Not more than six
30 members shall belong to the same political party.

31 At its first meeting, which shall be held within fifty
32 days after this section takes effect, the commission shall
33 elect from among its members a chairman, who shall
34 preside over its meetings until the second Monday in
35 September of the next year. Thereafter, the commission
36 shall elect a chairman from among its members on the
37 second Monday in September of each year.

38 All members shall be eligible for reappointment once
39 by the governor. A member shall, unless sooner re-
40 moved, continue to serve until his term expires and his
41 successor has been appointed and has qualified. A
42 vacancy caused by the death, resignation or removal of
43 a member prior to the expiration of his term shall be
44 filled only for the remainder of such term.

45 For the purpose of carrying out its powers, duties and
46 responsibilities under this article, six members of the
47 commission shall constitute a quorum for the transac-
48 tion of business. Each member shall be entitled to one
49 vote. The commission shall meet at a time and place
50 designated by the chairman at least four times each
51 fiscal year. Additional meetings may be held when
52 called by the chairman or when requested by five
53 members of the commission or by the governor. All
54 meetings of the commission shall be open to the public.
55 Each member shall be reimbursed for all reasonable
56 and necessary expenses actually incurred in the perfor-
57 mance of his duties under this article.

58 The commission shall advise the division of commerce

59 in all matters relating to the development, establish-
60 ment and maintenance of the Blennerhassett historical
61 state park.

62 All employee positions in the former Blennerhassett
63 historical park commission are hereby transferred to the
64 division of commerce and shall be included in the
65 classified service of the civil service system pursuant to
66 article six, chapter twenty-nine of this code. Any person
67 included in the classified service by the provisions of this
68 section who is employed in any of such positions as of
69 the effective date of this amendment and reenactment
70 shall not be required to take and pass qualifying or
71 competitive examinations upon or as a condition to being
72 added to the classified service: *Provided*, That no person
73 included in the classified service by the provisions of this
74 section who is employed in any of such positions as of
75 the effective date of this section, shall be thereafter
76 severed, removed or terminated from such employment
77 prior to his entry into the classified service except for
78 cause as if such person had been in the classified service
79 when severed, removed or terminated.

**§29-8-3. General powers of division of commerce with
respect to the Blennerhassett historical state
park.**

1 The administrator of the division of commerce, with
2 respect to developing and maintaining Blennerhassett
3 historical state park, may exercise all powers and duties
4 granted to him and his predecessor in respect to the
5 development and operation of other state parks, and in
6 addition, is specifically authorized to:

7 (1) Establish and maintain an office in the county of
8 Wood;

9 (2) Exercise his powers in the state of Ohio to the
10 extent permitted by the laws of the state of Ohio;

11 (3) Enter into any agreement with the state of Ohio
12 or any person, firm or corporation therein for the
13 provision of electricity, water, sewer and such similar
14 services to Blennerhassett Island as are necessary;

15 (4) Own or operate, or both, individually or in

16 conjunction with any other public agency or any private
17 person, firm or corporation, such facilities and equip-
18 ment as he considers necessary or convenient for the
19 implementation of his duties under this article. Without
20 limiting the generality of the foregoing, such facilities
21 and equipment may include boats, docks, an amphithea-
22 tre, parking facilities, the reconstructed Blennerhassett
23 mansion and other buildings; and

24 (5) Promulgate rules and regulations, in accordance
25 with the provisions of chapter twenty-nine-a of this code,
26 to implement and make effective the powers and duties
27 vested in him by the provisions of this article and take
28 such other steps as may, in his discretion, be necessary
29 or expedient for the proper and effective development
30 of Blennerhassett Island and related locations in the
31 county of Wood into a major educational, cultural and
32 recreational attraction.

**§29-8-4. Duties of division of commerce with respect to
the development of Blennerhassett Island.**

1 Within the limit of funds available from this state, the
2 United States and any other source, whether public or
3 private, the administrator shall:

4 (1) Plan and execute a program for the development
5 of educational, cultural and recreational attractions
6 related to events known or believed to have occurred on
7 and near Blennerhassett Island; and

8 (2) Plan and execute a program for the development
9 of Blennerhassett Island and related locations in the
10 county of Wood so as to preserve and enhance the island
11 and related locations as a significant historical, natural
12 and archaeological resource of importance to this state
13 and the nation.

14 In carrying out his duties under subdivisions (1) and
15 (2) of this section, he shall, as near as practicable, adhere
16 to the recommendations and plans for development
17 contained in the documents prepared for the Blenner-
18 hassett historical commission, submitted to the Blenner-
19 hassett historical park commission on the eighteenth day
20 of February, one thousand nine hundred seventy-five,

21 and titled as follows: (a) Summary report for the
22 development of Blennerhassett Island, (b) physical
23 master plan, (c) interpretive master plan, (d) environ-
24 mental impact and (e) market and economic impact.

**§29-8-5. Cooperation of state agencies and local govern-
ment with Blennerhassett historical state park
commission and division of commerce; powers
of local government with respect to
development.**

1 (a) All other state and local governmental personnel
2 and agencies shall cooperate to the fullest possible
3 extent with the commission and the division to accomp-
4 lish the proper and effective development of Blennerhas-
5 sett Island and related locations in the county of Wood
6 into a major educational, cultural and recreational
7 attraction.

8 (b) The county of Wood, the city of Parkersburg, any
9 other municipality in the county and any board,
10 commission, authority, agency or other office created
11 under authority thereof may, in its discretion, engage in
12 any activity or undertaking designed to assist the
13 commission and the division in the proper and effective
14 development of Blennerhassett Island and related
15 locations in the county of Wood into a major educational,
16 cultural and recreational attraction.

CHAPTER 21

(H. B. 2700—By Delegate Farley)

[Passed April 7, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article two-
c, chapter thirteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to the allocation of the state ceiling for private activity
bonds; declaring public policy of the state to include the
construction of facilities for the generation of power
through the utilization of coal waste; clarifying that
issuers of private activity bonds shall include the West
Virginia public energy authority; facilitating the

allocation of the state ceiling for certain projects producing energy from coal waste; and expanding the period for reservation of the state ceiling for certain projects producing energy from coal waste.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.

§13-2C-21. Ceiling on issuance of private activity bonds; establishing procedure for allocation and disbursements; reservation of funds; limitations; unused allocation; expirations and carryovers.

1 (a) Private activity bonds (as defined in section
2 141(a) of the United States Internal Revenue Code of
3 1986, other than those described in section 146(g) of the
4 Internal Revenue Code) issued pursuant to this article,
5 including bonds issued by the West Virginia public
6 energy authority pursuant to subsection (8), section five,
7 article one, chapter five-d of this code, or under article
8 eighteen, chapter thirty-one of this code, during any
9 calendar year shall not exceed the ceiling established by
10 section 146(d) of the United States Internal Revenue
11 Code. It is hereby determined and declared as a matter
12 of legislative finding (i) that the production of bitumi-
13 nous coal in this state has resulted in coal waste, which
14 coal waste is stored in areas generally referred to as gob
15 piles; (ii) that such gob piles are unsightly and have the
16 potential to pollute the environment in this state;
17 (iii) that the utilization of the materials in such gob piles
18 to produce alternative forms of energy needs to be
19 encouraged; (iv) that section 142(a)(6) of the United
20 States Internal Revenue Code of 1986 permits the
21 financing of solid waste disposal facilities through the
22 issuance of such private activity bonds; (v) that it is in
23 the best interest of this state and the citizens thereof to
24 facilitate the construction of facilities for the generation
25 of power through the utilization of coal waste by

26 providing an orderly mechanism for the commitment of
27 the annual ceiling for private activity bonds for such
28 projects.

29 (b) On or before the first day of each calendar year,
30 the director of the governor's office of community and
31 industrial development shall determine the state ceiling
32 for such year based on the criteria of the United States
33 Internal Revenue Code, which annual ceiling shall be
34 allocated among the several issuers of bonds under this
35 article or under article eighteen, chapter thirty-one of
36 this code, as follows:

37 (1) Fifty million dollars shall be allocated to the West
38 Virginia housing development fund for the purpose of
39 issuing qualified mortgage bonds, qualified mortgage
40 certificates or bonds for qualified residential rental
41 projects.

42 (2) One half the total state ceiling for each year
43 remaining after the allocation to the West Virginia
44 housing development fund described in subdivision
45 (1) shall be allocated to the counties on a per capita
46 basis and, unless the context in which used requires
47 otherwise, shall be hereinafter in this section referred
48 to as the "county allocation."

49 (3) One half of the total state ceiling for each year
50 remaining after the allocation to the West Virginia
51 housing development fund described in subdivision
52 (1) shall be retained by the state of West Virginia by
53 the governor's office of community and industrial
54 development and, unless the context in which used
55 requires otherwise, shall be hereinafter in this section
56 referred to as the "state allocation."

57 (c) The director of the governor's office of community
58 and industrial development shall notify each clerk of the
59 county commission of that county's apportionment from
60 the county allocation. All apportionments made to any
61 county from the county allocation shall be for issues of
62 the county commission of that county and for issues of
63 all municipalities or other governmental bodies within
64 that county.

65 (d) Notwithstanding the foregoing, in the event the
66 state allocation is fully distributed prior to the first day
67 of July of each calendar year, the governor's office of
68 community and industrial development may reallocate
69 all or any portion of the then remaining county
70 allocation to the state upon the director's notification of
71 such action to the clerk of the several county commis-
72 sions. Any reallocations of less than all of the then
73 remaining county allocation shall be made proportion-
74 ately from each county's apportionment then remaining.

75 (e) Distribution of both the county and state alloca-
76 tions to lessees, purchasers or owners of proposed
77 commercial or industrial projects shall be on a first
78 come, first serve basis and shall not be distributed or
79 allocated for any project until the governmental body,
80 seeking the same shall submit an application for
81 reservation of funds as provided in subsection (f) of this
82 section. The governmental body must first adopt an
83 inducement resolution approving the prospective issu-
84 ance of bonds and setting forth the amount of bonds to
85 be issued. Each governmental body, which includes the
86 West Virginia public energy authority, seeking an
87 allocation of the state ceiling following the adoption of
88 such inducement resolution shall submit a notice of
89 inducement signed by its clerk, secretary or recorder or
90 other appropriate official to the governor's office of
91 community and industrial development. Such notice
92 shall include such information as may be required by
93 the governor's office of community and industrial
94 development by rule or regulation. Notwithstanding the
95 foregoing, when an issuer described in this section
96 proposes to issue bonds for the purpose of constructing
97 an energy producing project which relies, in whole or
98 in part, upon coal waste as fuel, to the extent such
99 project qualifies as a solid waste facility under section
100 142(a)(6) of the United States Internal Revenue Code of
101 1986, such project may be given an allocation from the
102 state ceiling available for any year subsequent to the
103 year in which application is made (other than the
104 amount to be allocated pursuant to subdivision (1) of
105 subsection (b) of this section), at the discretion of the
106 director of the governor's office of community and

107 industrial development: *Provided*, That no such discre-
108 tionary allocation may be made to any single project in
109 an amount in excess of forty percent of the state ceiling
110 available for such year subsequent to the year in which
111 the request is made (exclusive of the amount to be
112 allocated pursuant to subdivision (1) of subsection (b) of
113 this section for such year). A discretionary allocation of
114 the state ceiling for a project described in the preceding
115 sentence shall not be granted by the director of the
116 governor's office of community and industrial develop-
117 ment unless the project for which the request is made
118 has received a certification from the Federal Energy
119 Regulatory Commission as a qualifying facility or a
120 cogeneration project.

121 (f) Currently with or following the submission of its
122 notice of inducement, the governmental body at any
123 time deemed expedient by it may submit its notice of
124 reservation of funds which shall include the following
125 information:

126 (1) The date of the notice of reservation of funds;

127 (2) The identity of the governmental body issuing the
128 bonds;

129 (3) The date of inducement and the prospective date
130 of issuance;

131 (4) The name of the entity for which the bonds are to
132 be issued;

133 (5) The amount of the bond issue, or, if the amount
134 of the bond issue for which a reservation of funds has
135 been made has been increased, the amount of the
136 increase;

137 (6) The type of issue; and

138 (7) A description of the project for which the bonds
139 are to be issued.

140 (g) (1) Upon receipt of the notice of reservation of
141 funds by the governor's office of community and
142 industrial development, such office shall immediately
143 note upon the face of such notice the date and time the
144 same was so received and shall within ten days certify

145 to the governmental body submitting the same (A) that
146 the statewide ceiling has not been exceeded, if such be
147 the case, and (B) that the amount of the bond issue has
148 been allocated and reserved in the name of such
149 governmental body for the project for which the bonds
150 are to be issued and, thereafter, the amount of such bond
151 issue shall be so allocated and reserved.

152 (2) In the event the amount required in the notifica-
153 tion of reservation of funds, as provided for in subdivi-
154 sion (1) of this subsection, exceeds the apportionment
155 available to that county from the county allocation, the
156 governor's office of community and industrial develop-
157 ment shall immediately notify the governmental body
158 proposing to issue such bonds of that fact and such body
159 may apply to such office for an apportionment to the
160 extent of such excess from the state allocation.

161 (h) The governmental body shall submit a new notice
162 of reservation of funds pursuant to subsections (f) and
163 (g) above for any increase in the amount of a bond issue
164 for which a reservation of funds has been made. Such
165 notice shall be treated as a new request for a reservation
166 of funds to the extent of such increase.

167 (i) If the bond issue for which a reservation has been
168 made has not been finally closed within one hundred
169 twenty days of the date of the certification of reservation
170 to be made by the governor's office of community and
171 industrial development, as required by the provisions of
172 subsection (g) of this section, or the thirty-first day of
173 December following such date of certification if sooner
174 and a statement of bond closure which has been
175 executed by the clerk, secretary, recorder or other
176 appropriate official of the governmental body reserving
177 the same has not been received by such office within
178 that time, then such reservation shall expire and be
179 deemed to have been forfeited and the funds so reserved
180 shall be released and revert to the county and/or state
181 allocation, as the case may be, from which the funds
182 were originally reserved and allocation will then be
183 made available for other qualified issues in accordance
184 with this section and the Internal Revenue Code:
185 *Provided, That, as to any notice of reservation of funds*

186 received by the governor's office of community and
187 industrial development during the month of December
188 in any calendar year with respect to any project
189 qualifying as an elective carry forward pursuant to
190 section 146(f)(5) of the Internal Revenue Code, such
191 reservation of funds and the allocation to which the
192 same relates shall not expire or be subject to forfeiture:
193 *Provided, however,* That any unused state ceiling as of
194 the thirty-first day of December in any year not
195 otherwise subject to a carry forward pursuant to section
196 146(f) of the Internal Revenue Code shall be allocated
197 to the West Virginia housing development fund, which
198 shall be deemed to have elected to carry forward the
199 unused state ceiling for the purpose of issuing qualified
200 mortgage bonds, qualified mortgage credit certificates
201 or bonds for qualified residential rental projects, each
202 as defined in the Internal Revenue Code. All requests
203 for subsequent reservation of funds and reallocation
204 upon loss of a reservation pursuant to this section will
205 be treated in the same manner as a new notice of
206 reservation of funds in accordance with subsections
207 (f) and (g) above.

208 (j) Once a reservation of an allocation has been made
209 to an energy producing project which relies, in whole
210 or in part, upon coal waste as fuel and otherwise
211 qualifies as a solid waste facility under section
212 142(a)(6) of the United States Internal Revenue Code of
213 1986, notwithstanding the language of subsection (i) of
214 this section, such reservation shall remain fully availa-
215 ble with respect to such project until the first day of
216 October in the year from which the reservation of
217 allocation was made at which time, if the bond issue has
218 not been finally closed, the reservation shall expire and
219 be deemed forfeited and the funds so reserved shall be
220 released as provided in subsection (i) of this section.

221 (k) Any amount of the county allocation remaining
222 unreserved on the first day of October in any calendar
223 year (which amount shall be determined by the director
224 of the governor's office of community and industrial
225 development) shall revert to the state allocation for the
226 remainder of that year, and all notification of reserva-

227 tion of funds by either the state or any county submitted
228 on or after such date shall be treated on a first come,
229 first serve basis.

230 (l) The amendments to this section adopted by the
231 Legislature at the regular session thereof, held in the
232 year one thousand nine hundred eighty-nine, shall apply
233 and be effective with respect to such year and to all
234 subsequent years.

CHAPTER 22

(Com. Sub. for S. B. 572—By Senator Tucker, Mr. President)

[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the exemption of certain charitable organizations from filing annual registration statements with the secretary of state provided that each such charitable organization does not employ professional solicitors or fund-raisers or does not intend to solicit and receive and does not actually raise or receive contributions in excess of ten thousand dollars; and changing the statement printed on solicitation materials relating to the source for documents.

Be it enacted by the Legislature of West Virginia:

That section six, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-6. Certain persons and organizations exempt from registration.

1 (a) The following charitable organizations shall not be
2 required to file an annual registration statement with
3 the secretary of state:

4 (1) Educational institutions, the curriculums of which

5 in whole or in part are registered or approved by the
6 state board of education, either directly or by acceptance
7 of accreditation by an accrediting body recognized by
8 the state board of education; and any auxiliary associ-
9 ations, foundations and support groups which are
10 directly responsible to any such educational institutions;

11 (2) Persons requesting contributions for the relief of
12 any individual specified by name at the time of the
13 solicitation when all of the contributions collected
14 without any deductions whatsoever are turned over to
15 the named beneficiary for his or her use;

16 (3) Hospitals which are nonprofit and charitable;

17 (4) Organizations which solicit only within the mem-
18 bership of the organization by the members thereof:
19 *Provided*, That the term "membership" shall not include
20 those persons who are granted a membership upon
21 making a contribution as the result of solicitation. For
22 the purpose of this section, "member" means a person
23 having membership in a nonprofit corporation, or other
24 organization, in accordance with the provisions of its
25 articles of incorporation, bylaws or other instruments
26 creating its form and organization; and, having bona
27 fide rights and privileges in the organization, such as
28 the right to vote, to elect officers, directors and issues,
29 to hold office or otherwise as ordinarily conferred on
30 members of such organizations;

31 (5) Religious organizations, churches or any group
32 affiliated with and forming an integral part of these
33 organizations of which no part of the net income inures
34 to the direct benefits of any individual and which have
35 received a declaration of current tax-exempt status from
36 the government of the United States.

37 (b) The following charitable organizations are exempt
38 from filing an annual registration statement with the
39 secretary of state if they do not employ a professional
40 solicitor or fund-raiser or do not intend to solicit and
41 receive and do not actually raise or receive contributions
42 from the public in excess of ten thousand dollars during
43 a calendar year:

44 (1) Local youth athletic organizations: *Provided*, That
45 such organizations may solicit and receive contributions
46 from the public in excess of ten thousand dollars during
47 a calendar year and still be exempt from filing an
48 annual registration statement;

49 (2) Community civic clubs;

50 (3) Community service clubs;

51 (4) Fraternal organizations;

52 (5) Labor unions;

53 (6) Local posts, camps, chapters or similarly desig-
54 nated elements or county units of such elements of bona
55 fide veterans organizations or auxiliaries which issue
56 charters to such local elements throughout the state;

57 (7) Bona fide organizations of volunteer firemen or
58 auxiliaries;

59 (8) Bona fide ambulance associations or auxiliaries;

60 (9) Bona fide rescue squad associations or auxiliaries.

61 Charitable organizations which do not intend to solicit
62 and receive in excess of ten thousand dollars, but do
63 receive in excess of that amount from the public, shall
64 file the annual registration statement within thirty days
65 after contributions are in excess of ten thousand dollars.

66 (c) Every printed solicitation shall include the follow-
67 ing statement: "West Virginia residents may obtain a
68 summary of the registration and financial documents
69 from the secretary of state, state capitol, Charleston,
70 West Virginia 25305. Registration does not imply
71 endorsement."

CHAPTER 23

(H. B. 2031—By Delegates Love and Leggett)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article nineteen, chapter twenty-nine of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, by adding thereto a new section,

designated section sixteen, relating to continuation of the commission on charitable organizations.

Be it enacted by the Legislature of West Virginia:

That article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section sixteen, to read as follows:

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-16. Continuation of commission.

1 After having conducted a performance and fiscal
2 audit through its joint committee on government
3 operations, pursuant to section nine, article ten, chapter
4 four of this code, the Legislature hereby finds and
5 declares that the commission on charitable organiza-
6 tions should be continued and reestablished. Accord-
7 ingly, notwithstanding the provisions of section four,
8 article ten, chapter four of this code, the commission on
9 charitable organizations shall continue to exist until the
10 first day of July, one thousand nine hundred ninety-five.

CHAPTER 24

(Com. Sub. for S. B. 377—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to guidelines for child support awards generally; establishing a rebuttable presumption that the amount of a child support award resulting from the application of such child support guidelines is correct; describing the circumstances under which such guidelines should not be followed, with specific provision made for support agreements; and requiring a review of child support guidelines at least once every four years.

Be it enacted by the Legislature of West Virginia:

That section eight, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48A-2-8. Guidelines for child support awards.

1 (a) The director of the child advocate office shall, by
2 legislative rule, establish guidelines for child support
3 award amounts so as to ensure greater uniformity by
4 those persons who make child support recommendations
5 and enter child support orders, and to increase predic-
6 tability for parents, children and other persons who are
7 directly affected by child support orders. There shall be
8 a rebuttable presumption, in any proceeding before a
9 family law master or circuit court judge for the award
10 of child support, that the amount of the award which
11 would result from the application of such guidelines is
12 the correct amount of child support to be awarded. A
13 written finding or specific finding on the record that the
14 application of the guidelines would be unjust or
15 inappropriate in a particular case shall be sufficient to
16 rebut the presumption in that case. The guidelines shall
17 not be followed:

18 (1) When the child support award proposed to be
19 made pursuant to the guidelines has been disclosed to
20 the parties and each party has made a knowing and
21 intelligent waiver of said amount, and the support
22 obligors have entered into an agreement which provides
23 for the custody and support of the child or children of
24 the parties; or

25 (2) When the child support award proposed to be
26 made pursuant to the guidelines would be contrary to
27 the best interests of the child or children, or contrary
28 to the best interests of the parties.

29 (b) The Legislature, by the enactment of this article,
30 recognizes that children have a right to share in their
31 natural parents' level of living. Accordingly, guidelines
32 promulgated under the provisions of this section shall
33 not be based upon any schedule of minimum costs for
34 rearing children based upon subsistence level amounts
35 set forth by various agencies of government. The

36 Legislature recognizes that expenditures in families are
37 not made in accordance with subsistence level stand-
38 ards, but are rather made in proportion to household
39 income, and as parental incomes increase or decrease,
40 the actual dollar expenditures for children also increase
41 or decrease correspondingly. In order to ensure that
42 children properly share in their parents' resources,
43 regardless of family structure, the guidelines shall be
44 structured so as to provide that after a consideration of
45 respective parental incomes, that child support will be
46 related, to the extent practicable, to the level of living
47 which such children would enjoy if they were living in
48 a household with both parents present.

49 (c) The guidelines promulgated under the provisions
50 of this section shall take into consideration the financial
51 contributions of both parents. The Legislature recog-
52 nizes that expenditures in households are made in
53 aggregate form and that total family income is pooled
54 to determine the level at which the family can live. The
55 guidelines shall provide for examining the financial
56 contributions of both parents in relationship to total
57 income, so as to establish and equitably apportion the
58 child support obligation. Under the guidelines, the child
59 support obligation of each parent will vary proportion-
60 ately according to their individual incomes.

61 (d) The guidelines shall be structured so as to take
62 into consideration any preexisting support orders which
63 impose additional duties of support upon an obligor
64 outside of the instant case, and shall provide direction
65 in cases involving split or shared custody.

66 (e) The guidelines shall have application to cases of
67 divorce, paternity, actions for support, and modifica-
68 tions thereof.

69 (f) In promulgating the legislative rule provided for
70 under the provisions of this section, the director shall be
71 directed by the following legislative findings:

72 (1) That amounts to be fixed as child support should
73 not include awards for alimony, notwithstanding the
74 fact that any amount fixed as child support will impact
75 upon the living conditions of custodial parents;

76 (2) That parental expenditures on children represent
77 a relatively constant percentage of family consumption
78 as family consumption increases, so that as family
79 income increases, the family's level of consumption
80 increases, and the children should share in and benefit
81 from this increase;

82 (3) That parental expenditures on children represent
83 a declining proportion of family income as the gross
84 income of the family increases, so that while total dollar
85 outlays for children have a positive relationship to the
86 family's gross income, the proportion of gross family
87 income allotted for the children has a negative relation-
88 ship to gross income;

89 (4) That expenditures on children vary according to
90 the number of children in the family, and as the number
91 of children in the family increase, the expenditures for
92 the children as a group increase, and the expenditures
93 on each individual child decrease; so that due to
94 increasing economies of scale and the increased sharing
95 of resources among family members, spending will not
96 increase in direct proportion to the number of children;

97 (5) That as children grow older, expenditures on
98 children increase, particularly during the teenage years.

99 (g) The director of the child advocate office shall
100 review the guidelines at least once every four years to
101 ensure that their application results in the determina-
102 tion of appropriate child support awards. Such four-year
103 period shall begin on the first day of July, one thousand
104 nine hundred eighty-nine.

CHAPTER 25

(S. B. 380—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter forty-eight-a of the
code of West Virginia, one thousand nine hundred

thirty-one, as amended, by adding thereto a new section, designated section three-a; and to amend and reenact sections twelve, eighteen, thirty-six and thirty-seven, article seven of said chapter, all relating to whom the children's advocate represents.

Be it enacted by the Legislature of West Virginia:

That article three, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-a; and that sections twelve, eighteen, thirty-six and thirty-seven, article seven of said chapter, be amended and reenacted, all to read as follows:

Article

3. Children's Advocate.

7. Revised Uniform Reciprocal Enforcement of Support Act.

ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-3a. Representation by the children's advocate.

- 1 Unless otherwise specifically provided, the children's
- 2 advocate shall represent only the child when participat-
- 3 ing in any civil action pursuant to the duties of the
- 4 children's advocate under the provisions of this chapter
- 5 or chapter forty-eight of this code. The pleadings shall
- 6 indicate that the children's advocate represents only the
- 7 child.

**ARTICLE 7. REVISED UNIFORM RECIPROCAL ENFORCEMENT
OF SUPPORT ACT.**

§48A-7-12. Children's advocate to represent child.

§48A-7-18. Duty of court and officials of this state as responding state.

§48A-7-36. Children's advocate to represent child.

§48A-7-37. Registration procedure; notice; children's advocate to enforce order.

§48A-7-12. Children's advocate to represent child.

- 1 If this state is acting as an initiating state, the
- 2 children's advocate shall represent the child in any
- 3 proceedings under this article.

**§48A-7-18. Duty of court and officials of this state as
responding state.**

- 1 (a) After a circuit court of this state, acting as the

2 responding court, receives copies of the petition or
3 complaint, certificate and act from the initiating court
4 of another state, the clerk of the circuit court shall
5 docket the case and notify the children's advocate of
6 such action.

7 (b) The children's advocate shall prosecute the case
8 diligently in the best interests of the child. He or she
9 shall take all action necessary in accordance with the
10 laws of this state to enable the court to obtain jurisdic-
11 tion over the obligor or his property and shall request
12 the court to set a time and place for a hearing and give
13 notice thereof to the obligor in accordance with law.

§48A-7-36. Children's advocate to represent child.

1 If this state is acting either as a rendering or a
2 registering state, the children's advocate shall represent
3 the child in proceedings under sections thirty-three
4 through thirty-eight of this article.

§48A-7-37. Registration procedure; notice; children's advocate to enforce order.

1 (a) An obligee seeking to register a foreign support
2 order in a circuit court of this state shall transmit to
3 the clerk of the court (1) three certified copies of the
4 order with all modifications thereof, (2) one copy of the
5 reciprocal enforcement of support law of the state in
6 which the order was made, and (3) a statement verified
7 and signed by the obligee, showing the post-office
8 address of the obligee, the last known place of residence
9 and post-office address of the obligor, the amount of
10 support remaining unpaid, a description and the
11 location of any property of the obligor available upon
12 execution, and a list of the states in which the order is
13 registered. Upon receipt of these documents the clerk of
14 the court, without payment of a filing fee or other cost
15 to the obligee, shall file them in the registry of foreign
16 support orders. The filing constitutes registration under
17 this article.

18 (b) Promptly upon registration the clerk of the court
19 shall send by certified or registered mail to the obligor
20 at the address given a notice of the registration with a

- 21 copy of the registered support order and the post-office
22 address of the obligee. He shall also docket the case and
23 notify the children's advocate of his action. The child-
24 ren's advocate shall proceed diligently to enforce the
25 order in the best interests of the child.

CHAPTER 26

(S. B. 310—By Senator Lucht)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six, eight, nine, ten, eleven and fourteen, article two-b, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section sixteen, all relating to the registration of family day care homes by the commissioner of human services; general requirements for registration; and penalties and injunctions.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, eight, nine, ten, eleven and fourteen, article two-b, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section sixteen, all to read as follows:

ARTICLE 2B. DUTIES OF COMMISSIONER OF HUMAN SERVICES FOR CHILD WELFARE.

- §49-2B-1. Policy and purpose; transfer of powers of child welfare licensing board.
§49-2B-2. Definitions.
§49-2B-3. License, approval and registration requirements.
§49-2B-4. Rules.
§49-2B-5. Penalties; injunctions.
§49-2B-6. Conditions of licensure, approval and registration.
§49-2B-8. Application for license or approval.
§49-2B-9. Supervision and consultation required.
§49-2B-10. Investigating authority.
§49-2B-11. Revocation; provisional licenses and approval.

§49-2B-14. Annual reports; directory; licensing reports and recommendations.

§49-2B-16. Education of the public.

§49-2B-1. Policy and purpose; transfer of powers of child welfare licensing board.

1 It is the policy of the state to assist a child and the
2 child's family as the basic unit of society through efforts
3 to strengthen and preserve the family unit. In the event
4 of a temporary or permanent absence of parents or the
5 separation of a child from the family unit for care or
6 treatment purposes, it is the policy of the state to assure
7 that a child receives care and nurturing as close as
8 possible to society's expectations of a family's care and
9 nurturing of its child. The state has a duty to assure that
10 proper and appropriate care is given and maintained.

11 Through licensing, approving and registering child
12 care facilities and child welfare agencies, the state
13 exercises its benevolent police power to protect the user
14 of a service from risks against which he or she would
15 have little or no competence for self protection.
16 Licensing, approval and registration processes must
17 therefore continually balance the child's rights and need
18 for protection with the interests, rights and responsibil-
19 ity of the service providers.

20 In order to carry out the above policy, the Legislature
21 enacts this article to protect and prevent harm to
22 children separated from their families and to enhance
23 their continued growth and well-being while in care.

24 The purposes of this article are:

25 (i) To protect the health, safety and well-being of
26 children in substitute care by preventing improper and
27 harmful care; (ii) to establish statewide rules for
28 regulating programs as defined in this article; and (iii)
29 to encourage and assist in the improvement of child care
30 programs. In order to carry out these purposes, the
31 powers of the child welfare licensing board created by
32 chapter nineteen, acts of the Legislature, one thousand
33 nine hundred forty-five, are hereby transferred to the
34 commissioner of human services, along with the other
35 powers granted by this article.

§49-2B-2. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

3 "Approval" means a finding by the commissioner that
4 a facility operated by the state has met the requirements
5 set forth in the rules promulgated pursuant to this
6 article.

7 "Certificate of approval" means a statement of the
8 commissioner that a facility operated by the state has
9 met the requirements set forth in the rules promulgated
10 pursuant to this article.

11 "Certificate of license" means a statement issued by
12 the commissioner authorizing an individual, corpora-
13 tion, partnership, voluntary association, municipality or
14 county, or any agency thereof, to provide specified
15 services for a limited period of time in accordance with
16 the terms of the certificate.

17 "Certificate of registration" means a statement issued
18 by the commissioner to a family day care home upon
19 receipt of a self-certification statement of compliance
20 with the rules promulgated pursuant to the provisions
21 of this article.

22 "Child" means any person under eighteen years of age.

23 "Child care" means responsibilities assumed and
24 services performed in relation to a child's physical,
25 emotional, psychological, social and personal needs and
26 the consideration of the child's rights and entitlements.

27 "Child placing agency" means a child welfare agency
28 organized for the purpose of placing children in private
29 family homes for foster care or for adoption. The
30 function of a child placing agency may include the
31 investigation and certification of foster family homes
32 and foster family group homes as provided in this
33 chapter. The function of a child placing agency may also
34 include the supervision of children who are sixteen or
35 seventeen years old and living in unlicensed residences.

36 "Commissioner" means the commissioner of human
37 services.

38 "Day care center" means a facility operated by a child
39 welfare agency for the care of seven or more children
40 on a nonresidential basis.

41 "Department" means the state department of human
42 services.

43 "Facility" means a place or residence, including
44 personnel, structures, grounds and equipment used for
45 the care of a child or children on a residential or other
46 basis for any number of hours a day in any shelter or
47 structure maintained for that purpose.

48 "Family day care" means nonresidential child care
49 provided for compensation in a home other than the
50 child's own home. The provider may care for four to six
51 children, including children who are living in the
52 household, who are under six years of age. No more than
53 two of the total number of children may be under
54 twenty-four months of age.

55 "Foster family group home" means a private residence
56 which is used for the care on a residential basis of six,
57 seven or eight children who are unrelated by blood,
58 marriage, or adoption to any adult member of the
59 household.

60 "Foster family home" means a private residence
61 which is used for the care on a residential basis of no
62 more than five children who are unrelated by blood,
63 marriage, or adoption to any adult member of the
64 household.

65 "Group home" means any facility, public or private,
66 which is used to provide residential care for ten or fewer
67 children.

68 "Group home facility" means any facility, public or
69 private, which is used to provide residential care for
70 eleven or more children.

71 "License" means the grant of official permission to a
72 facility to engage in an activity which would otherwise
73 be prohibited.

74 "Registration" means the process by which a family

75 day care home self-certifies compliance with the rules
76 promulgated pursuant to this article.

77 "Residential child care" or "child care on a residential
78 basis" means child care which includes the provision of
79 nighttime shelter and the personal discipline and
80 supervision of a child by guardians, custodians or other
81 persons or entities on a continuing or temporary basis.

82 "Rule" means a statement issued by the commissioner
83 of the standard to be applied in the various areas of
84 child care.

85 "Variance" means a declaration that a rule may be
86 accomplished in a manner different from the manner set
87 forth in the rule.

88 "Waiver" means a declaration that a certain rule is
89 inapplicable in a particular circumstance.

§49-2B-3. License, approval and registration requirements.

1 (a) Any person, corporation, or child welfare agency
2 other than a state agency, which operates a residential
3 child care facility, a child placing agency or a day care
4 center shall have a license.

5 (b) Any residential child care facility, day care center
6 or any child placing agency operated by the state shall
7 obtain approval of its operations from the commissioner.
8 Such facilities and placing agencies shall maintain the
9 same standards of care applicable to licensed facilities,
10 centers or placing agencies of the same category.

11 (c) Every family day care home shall have a certif-
12 icate of registration. Family day care homes approved
13 by the department of human services for receipt of
14 funding shall automatically receive a certificate of
15 registration.

16 (d) This section does not apply to:

17 (1) A kindergarten, preschool or school education
18 program which is operated by a public school or which
19 is accredited by the state department of education, or
20 any other kindergarten, preschool or school programs

21 which operate with sessions not exceeding four hours
22 per day for any child;

23 (2) An individual or facility which offers occasional
24 care of children for brief periods while parents are
25 shopping, engaging in recreational activities, attending
26 religious services or engaging in other business or
27 personal affairs;

28 (3) Summer recreation camps operated for children
29 attending sessions for periods not exceeding thirty days;

30 (4) Hospitals or other medical facilities which are
31 primarily used for temporary residential care of
32 children for treatment, convalescence or testing; or

33 (5) Persons providing family day care solely for
34 children related to them.

§49-2B-4. Rules.

1 The commissioner shall promulgate rules for the
2 purpose of carrying out the provisions of this article, to
3 include the family day care registration program,
4 within one hundred eighty days of the effective date
5 hereof pursuant to the provisions of chapter twenty-
6 nine-a of this code: *Provided*, That any rule promulgated
7 as a result of the enactment of this section in the year
8 one thousand nine hundred eighty-one need not be
9 repromulgated.

10 The commissioner shall review the rules promulgated
11 pursuant to the provisions of this article at least once
12 every five years, making revisions when necessary or
13 convenient.

§49-2B-5. Penalties; injunctions.

1 (a) Any individual or corporation which operates a
2 child welfare agency, residential child care facility or
3 day care center without a license when a license is
4 required is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in jail
5 not exceeding one year, or a fine of not more than five
6 hundred dollars, or both fined and imprisoned.

8 (b) Where a violation of this article or a rule or

9 regulation promulgated by the commissioner may result
10 in serious harm to children under care, the commis-
11 sioner may seek injunctive relief against any person,
12 corporation, child welfare agency, child placing agency,
13 day care center, family day care home or governmental
14 official through proceedings instituted by the attorney
15 general, or the appropriate county prosecuting attorney,
16 in the circuit court of Kanawha County or in the circuit
17 court of any county where the children are residing or
18 may be found.

§49-2B-6. Conditions of licensure, approval and registration.

1 (a) A license or approval is effective for a period of
2 two years from the date of issuance, unless revoked or
3 modified to provisional status based on evidence of a
4 failure to comply with the provisions of this article or
5 any rules and regulations promulgated pursuant to this
6 article. The license or approval shall be reinstated upon
7 application to the commissioner and a determination of
8 compliance.

9 A certificate of registration is effective for a period
10 of two years from the date of issuance, unless revoked
11 based on evidence of a failure to comply with the
12 provisions of this article or any rules and regulations
13 promulgated pursuant to this article. The certificate of
14 registration shall be reinstated upon application to the
15 commissioner, including a statement of assurance of
16 continued compliance with the rules and regulations
17 promulgated pursuant to this article.

18 The license, approval or registration issued under this
19 article is not transferable and applies only to the facility
20 and its location stated in the application. The license or
21 approval shall be publicly displayed, except family day
22 care homes, foster family homes, foster family group
23 homes and group homes shall be required to display
24 licenses or registration certificates upon request rather
25 than by posting.

26 (b) A provisional license or approval may be issued as:

27 (i) An initial license or approval to a new facility

28 which has been unable to demonstrate full compliance
29 because the facility is not fully operational; or

30 (ii) A temporary license or approval to an established
31 licensed facility which is temporarily unable to conform
32 to the provisions of this article or the rules and
33 regulations promulgated hereunder.

34 A provisional license or approval shall expire six
35 months from the date of issuance and may be reinstated
36 no more than two times. The issuance of a provisional
37 license or approval shall be contingent upon the
38 submission to the commissioner of an acceptable plan to
39 overcome identified deficiencies within the period of the
40 provisional license or approval. Provisional certificates
41 of registration shall be issued to family day care homes.

42 (c) The commissioner, as a condition of issuing a
43 license, registration or approval, may:

44 (i) Limit the age, sex or type of problems of children
45 allowed admission to a particular facility;

46 (ii) Prohibit intake of any children; or

47 (iii) Reduce the number of children which the agency
48 or facility operated by the agency is licensed, approved
49 or registered to receive.

§49-2B-8. Application for license or approval.

1 Any person or corporation, or any governmental
2 agency intending to act as a child welfare agency shall
3 apply for a license, approval or registration certificate
4 to operate child care facilities regulated by this article.
5 Applications for license, approval or registration shall
6 be made separately for each child care facility to be
7 licensed, approved or registered.

8 The commissioner may prescribe forms and reasona-
9 ble application procedures.

10 (a) Before issuing a license or approval, the commis-
11 sioner shall investigate the facility, program and
12 persons responsible for the care of children. The
13 investigation shall include, but not be limited to, review
14 of resource need, reputation, character and purposes of
15 applicants, a check of personnel criminal records, if any,
16 and personnel medical records, the financial records of

17 applicants, and consideration of the proposed plan for
18 child care from intake to discharge.

19 (b) Before a family day care home registration is
20 granted, the commissioner shall make inquiry as to the
21 facility, program and persons responsible for the care
22 of children. The inquiry shall include self-certification
23 by the prospective family day care home of compliance
24 with standards including, but not limited to:

25 (i) Physical and mental health of persons present in
26 the home while children are in care;

27 (ii) Criminal and child abuse or neglect history of
28 persons present in the home while children are in care;

29 (iii) Discipline;

30 (iv) Fire and environmental safety;

31 (v) Equipment and program for the children in care;

32 (vi) Health, sanitation and nutrition.

33 Further inquiry and investigation may be made as the
34 commissioner may direct.

35 The commissioner shall make a decision on each
36 application within sixty days of its receipt and shall
37 provide to unsuccessful applicants written reasons for
38 the decision.

§49-2B-9. Supervision and consultation required.

1 The commissioner shall provide supervision to ascer-
2 tain compliance with the rules and regulations promul-
3 gated pursuant to this article through regular monitor-
4 ing, visits to facilities, documentation, evaluation and
5 reporting. The commissioner shall be responsible for
6 training and education, within fiscal limitations,
7 specifically for the improvement of care in family day
8 care homes. The commissioner shall consult with
9 applicants, the personnel of child welfare agencies, and
10 children under care to assure the highest quality child
11 care possible. The director of the department of health
12 and the state fire marshal shall cooperate with the
13 commissioner in the administration of the provisions of

14 this article by providing such reports and assistance as
15 may be requested by the commissioner.

§49-2B-10. Investigating authority.

1 The commissioner shall enforce the provisions of this
2 article. An on-site evaluation of every facility regulated
3 pursuant to this article, except registered family day
4 care homes, shall be conducted no less than once per
5 year by announced or unannounced visits. A random
6 sample of not less than five percent of registered family
7 day care homes shall be monitored annually through on-
8 site evaluations. The commissioner shall have access to
9 the premises, personnel, children in care and records of
10 the facility, including, but not limited to, case records,
11 corporate and financial records and board minutes.
12 Applicants for licenses, approvals and certificates of
13 registration shall consent to reasonable on-site adminis-
14 trative inspections, made with or without prior notice,
15 as a condition of licensing, approval or registration.
16 When a complaint is received by the commissioner
17 alleging violations of licensure, approval or registration
18 requirements, the commissioner shall investigate the
19 allegations. The commissioner may notify the facility's
20 director before or after a complaint is investigated and
21 shall cause a written report of the results of the
22 investigation to be made.

23 The commissioner may enter any unlicensed, or
24 unapproved child care facility or personal residence for
25 which there is probable cause to believe that the facility
26 or residence is operating in violation of this article. Such
27 entries shall be made with a law-enforcement officer
28 present. The commissioner may enter upon the premises
29 of any unregistered family day care facility after two
30 attempts by the commissioner to bring this facility into
31 compliance.

§49-2B-11. Revocation; provisional licenses and approvals.

1 (a) The commissioner may revoke or make provisional
2 the license of any facility or child welfare agency
3 regulated pursuant to this article, except family day
4 care homes, if a certificate holder materially violates

5 any provision of this article, or any terms or conditions
6 of the license or approval issued, or fails to maintain
7 established requirements of child care.

8 (b) The commissioner may revoke the certificate of
9 registration of any family day care home if a certificate
10 holder materially violates any provision of this article,
11 or any terms or conditions of the registration certificate
12 issued, or fails to maintain established requirements of
13 child care.

**§49-2B-14. Annual reports; directory; licensing reports
and recommendations.**

1 The commissioner shall submit on or before the first
2 day of January of each year a report to the governor,
3 and upon request to members of the Legislature,
4 concerning the regulation of child welfare agencies,
5 child placing agencies, day care centers, family day care
6 homes and child care facilities during the year. The
7 report shall include, but not be limited to, data on the
8 number of children and staff at each facility (except
9 family day care homes), applications received, types of
10 licenses, approvals and registrations granted, denied,
11 made provisional or revoked and any injunctions
12 obtained or facility closures ordered.

13 The commissioner also shall compile annually a
14 directory of licensed and approved child care providers
15 including a brief description of their program and
16 facilities, the program's capacity and a general profile
17 of children served. A listing of family day care homes
18 shall also be compiled annually.

19 Licensing reports and recommendations for licensure
20 which are a part of the yearly review of each licensed
21 facility shall be sent to the facility director. Copies shall
22 be available to the public upon written request to the
23 commissioner.

§49-2B-16. Education of the public.

1 The commissioner shall provide ongoing education of
2 the public in regard to the requirements of this article
3 through the use of mass media and other methods as are
4 deemed appropriate.

CHAPTER 27

(Com. Sub. for H. B. 2130—By Delegate Hatfield)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-d, relating to providing services to dysfunctional families in order to prevent outside placement of the children thereof; findings and purpose; definitions; requiring a judicial determination of whether or not reasonable efforts have been made before children may be placed outside the home; caseload limits; situational criteria requiring service; service delivery through purchase of service contracts; and provision of special services.

Be it enacted by the Legislature of West Virginia:

That chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-d, to read as follows:

ARTICLE 2D. HOME-BASED FAMILY PRESERVATION ACT.

- §49-2D-1. Findings and purpose.
- §49-2D-2. Definitions.
- §49-2D-3. Hearing required to determine "reasonable efforts."
- §49-2D-4. When family preservation services required.
- §49-2D-5. Caseload limits for home-based preservation services.
- §49-2D-6. Situational criteria requiring service.
- §49-2D-7. Service delivery through service contracts; accountability.
- §49-2D-8. Provision of special services.
- §49-2D-9. Development of home-based family preservation services.

§49-2D-1. Findings and purpose.

- 1 The Legislature finds that there exists a need in this
- 2 state to assist dysfunctional families by providing
- 3 nurture and care to such families' children as an
- 4 alternative to removing children from such families.

- 5 The Legislature also finds that the family is the
- 6 primary social institution responsible for meeting the

7 needs of children and that the state has an obligation
8 to assist families in this regard.

9 The Legislature further finds that children have
10 significant emotional and social ties to the natural or
11 surrogate family beyond basic care and nurture for
12 which the family is responsible.

13 The purpose of this article is to establish a pilot
14 program to evaluate the utility of providing intensive
15 intervention with the families of children that are at
16 risk of being removed from the home. For these limited
17 purposes, the department is authorized to use available
18 appropriate funds for such intervention service, but only
19 to the extent that such moneys would normally be
20 available for the removal and placement of the partic-
21 ular child at risk.

§49-2D-2. Definitions.

1 As used in this article, the following terms have the
2 meanings indicated:

3 (a) "Dysfunctional family" means a parent or parents
4 or an adult or adults and a child or children living
5 together and functioning in an impaired or abnormal
6 manner so as to cause substantial physical or emotional
7 danger, injury or harm to one or more children thereof
8 regardless of whether such children are natural offsp-
9 ring, adopted children, step children or unrelated
10 children to such parents.

11 (b) "Home-based family preservation services" means
12 services dispensed by the department of human services
13 or by another person, association or group who has
14 contracted with the department of human services to
15 dispense such services when such services are intended
16 to stabilize and maintain the natural or surrogate family
17 in order to prevent the placement of children in
18 substitute care. There are two types of home-based
19 family preservation services and they are as follows:

20 (1) Intensive, short term intervention of four to six
21 weeks; and

22 (2) Home-based, longer term after care following
23 intensive intervention.

§49-2D-3. Hearing required to determine “reasonable efforts.”

1 A hearing by a circuit court of competent jurisdiction
2 is required to determine whether or not “reasonable
3 efforts” have been made to stabilize and maintain the
4 family situation before any child may be placed outside
5 the home: *Provided*, That in the event any child appears
6 in imminent danger of serious bodily or emotional injury
7 or death in any home, a post-removal hearing shall be
8 substituted for the pre-removal hearing.

§49-2D-4. When family preservation services required.

1 Home-based family preservation services are required
2 in all cases where the removal of a child or children is
3 seriously being considered, whether from a natural
4 home or a surrogate home, wherein a child or children
5 have lived for a substantial period of time: *Provided*,
6 That such services are not required when the child
7 appears in imminent danger of serious bodily or serious
8 emotional injury.

§49-2D-5. Caseload limits for home-based preservation services.

1 For purposes of this article, no contractor employee
2 of the department of human services may exceed three
3 families during any period of time when such contractor
4 employee is engaged in providing intensive, short term
5 home-based family preservation intervention. In addition,
6 no caseload may exceed six families during any
7 period of time when home-based aftercare is provided
8 pursuant to this article.

9 When providing either type of home-based family
10 preservation services to any family, the department of
11 human services or contractor shall provide trained
12 personnel who shall be available during nonworking
13 hours to assist families on an emergency basis.

§49-2D-6. Situational criteria requiring service.

1 Services required by this article shall be made

2 available to any dysfunctional family in which there
3 exists an imminent risk of placement of at least one
4 child outside the home as the result of abuse, neglect,
5 dependency or delinquency or any emotional and
6 behavioral problems.

7 Payment for contractual services shall be on a cost per
8 family basis. Any renewal of any such contract shall be
9 based on performance.

**§49-2D-7. Service delivery through service contracts;
accountability.**

1 Services required by this article which are not
2 practically deliverable directly from the department of
3 human services may be subcontracted to professionally
4 qualified private individuals, associations, agencies,
5 corporations, partnerships or groups. The service
6 provider shall be required to submit monthly activity
7 reports as to any services rendered to the department
8 of human services. Such activity reports shall include
9 project evaluation in relation to individual families
10 being served as well as statistical data concerning
11 families that are referred for services which are not
12 served due to unavailability of resources. Costs of
13 program evaluation are an allowable cost consideration
14 in any service contract negotiated in accordance with
15 this article. The department shall conduct a thorough
16 investigation of the contractors utilized by the depart-
17 ment pursuant to this article. The department shall
18 further include the results of this investigation in its
19 report to the Legislature required by section nine of this
20 article.

§49-2D-8. Provision of special services.

1 Costs of providing special services to families receiv-
2 ing regular services in accordance with this article are
3 allowable to the extent such goods and services are
4 justified pursuant to carrying out the purposes of this
5 article. Such special services may include, but are not
6 limited to, homemaker assistance, food, clothing,
7 educational materials, respite care and recreational or
8 social activities.

§49-2D-9. Development of home-based family preservation services.

1 The department is authorized to use appropriate state,
2 federal, and/or private funds within its budget for the
3 provision of family preservation and reunification
4 services. Appropriated state funding made available
5 through capture of additional federal funds shall be
6 utilized to provide family preservation and reunification
7 services as described in this article. Costs of providing
8 home-based services described in this article shall not
9 exceed the costs of out-of-home care which would be
10 incurred otherwise. Notwithstanding the other provisions
11 of this article to the contrary, it is the intent of
12 this legislation to permit the department to establish a
13 pilot program in FY90 to serve two hundred families.
14 The department is vested with discretion to select target
15 populations using geographical or other criteria it
16 deems appropriate.

17 The department shall report back to the Legislature
18 by the thirty-first day of December, one thousand nine
19 hundred ninety, on the feasibility of using funds
20 currently earmarked for the placement of children for
21 the intervention and what additional amounts may be
22 needed to fully implement this article.

CHAPTER 28

(Com. Sub. for S. B. 308—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed March 23, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section four, article four, chapter forty-nine
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to an advisory board of
physicians for the handicapped children's board.

Be it enacted by the Legislature of West Virginia:

That section four, article four, chapter forty-nine of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be repealed as follows:

ARTICLE 4. HANDICAPPED CHILDREN.**§49-4-4. Repeal of section relating to an advisory board of physicians for the handicapped children's board.**

- 1 Section four, article four, chapter forty-nine of the
- 2 code of West Virginia, one thousand nine hundred
- 3 thirty-one, as amended, is hereby repealed.

CHAPTER 29

(Com. Sub. for H. B. 2665—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to repeal sections four-a, thirteen, fifteen and eighteen, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article two, chapter five-f; to amend and reenact sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fourteen, sixteen, seventeen, seventeen-a, seventeen-b, twenty, twenty-one and twenty-three, article six, chapter twenty-nine; and to further amend article six by adding thereto two new sections, designated sections nine-a and twenty-five, all relating to the civil service system; modification of layoff and bumping rights of classified employees; definition of terms; classified service; classified-exempt service; exemptions; creation of division of personnel; sections; creation of personnel board; members; terms; quorum; vacancies; powers and duties; director of division of personnel appointed; qualifications; powers and duties; civil service commission abolished; transfer of duties and responsibilities; rule of construction; transfer of employees, equipment, and records; continuation of programs, protections and rules; state personnel advisory council; rules of division; eligible lists; duties of state officers and employees; legal proceedings; certification of payrolls; wrongfully withholding certification of payroll; repeal of archaic

provisions and provisions relating to functions formerly transferred to the education and state employees grievance board; records of state personnel division; services to political subdivisions; apprenticeship program; advisory board for the apprenticeship program; favoritism or discrimination; acts prohibited; appropriations, cost of administering article; acceptance of grant or contribution; implementation; and report to governor and Legislature.

Be it enacted by the Legislature of West Virginia:

That sections four-a, thirteen, fifteen and eighteen, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section two, article two, chapter five-f be amended and reenacted; that sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fourteen, sixteen, seventeen, seventeen-a, seventeen-b, twenty, twenty-one and twenty-three, article six, chapter twenty-nine be amended and reenacted; and that article six be further amended by adding thereto two new sections, designated sections nine-a and twenty-five, all to read as follows:

Chapter

5F. Reorganization of the Executive Branch of State Government.

29. Miscellaneous Boards and Officers.

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-2. Power and authority of secretary of each department.

1 (a) Notwithstanding any other provision of this code
2 to the contrary, the secretary of each department shall
3 have plenary power and authority within and for the
4 department to:

5 (1) Employ and discharge within the office of the
6 secretary such employees as may be necessary to carry
7 out the functions of the secretary, which employees shall
8 serve at the will and pleasure of the secretary;

9 (2) Cause the various agencies and boards to be
10 operated effectively, efficiently and economically, and
11 develop goals, objectives, policies and plans that are
12 necessary or desirable for the effective, efficient and
13 economical operation of the department;

14 (3) Eliminate or consolidate positions, other than
15 positions of administrators or positions of board
16 members, and name a person to fill more than one
17 position;

18 (4) Delegate, assign, transfer or combine responsibil-
19 ities or duties to or among employees, other than
20 administrators or board members;

21 (5) Reorganize internal functions or operations;

22 (6) Formulate comprehensive budgets for considera-
23 tion by the governor, and transfer within the depart-
24 ment funds appropriated to the various agencies of the
25 department which are not expended due to cost savings
26 resulting from the implementation of the provisions of
27 this chapter: *Provided*, That no more than twenty-five
28 percent of the funds appropriated to any one agency or
29 board may be transferred to other agencies or boards
30 within the department: *Provided, however*, That no
31 funds may be transferred from a special revenue
32 account, dedicated account, capital expenditure account
33 or any other account or funds specifically exempted by
34 the Legislature from transfer, except that the use of
35 appropriations from the state road fund transferred to
36 the office of the secretary of the department of trans-
37 portation is not a use other than the purpose for which
38 such funds were dedicated and is permitted: *Provided*
39 *further*, That if the Legislature by subsequent enactment
40 consolidates agencies, boards or functions, the secretary
41 may transfer the funds formerly appropriated to such
42 agency, board or function in order to implement such
43 consolidation. The authority to transfer funds under this
44 section shall expire on the thirtieth day of June, one
45 thousand nine hundred eighty-nine;

46 (7) Enter into contracts or agreements requiring the
47 expenditure of public funds, and authorize the expen-
48 diture or obligating of public funds as authorized by

49 law: *Provided*, That the powers granted to the secretary
50 to enter into contracts or agreements and to make
51 expenditures or obligations of public funds under this
52 provision shall not exceed or be interpreted as authority
53 to exceed the powers heretofore granted by the Legis-
54 lature to the various commissioners, directors or board
55 members of the various departments, agencies or boards
56 that comprise and are incorporated into each secretary's
57 department under this chapter;

58 (8) Acquire by lease or purchase property of whatever
59 kind or character, and convey or dispose of any property
60 of whatever kind or character as authorized by law:
61 *Provided*, That the powers granted to the secretary to
62 lease, purchase, convey or dispose of such property shall
63 not exceed or be interpreted as authority to exceed the
64 powers heretofore granted by the Legislature to the
65 various commissioners, directors or board members of
66 the various departments, agencies or boards that
67 comprise and are incorporated into each secretary's
68 department under this chapter;

69 (9) Conduct internal audits;

70 (10) Supervise internal management;

71 (11) Promulgate rules, as defined in section two,
72 article one, chapter twenty-nine-a of this code, to
73 implement and make effective the powers, authority and
74 duties granted and imposed by the provisions of this
75 chapter, such promulgation to be in accordance with the
76 provisions of chapter twenty-nine-a of this code;

77 (12) Grant or withhold written consent to the proposal
78 of any rule, as defined in section two, article one,
79 chapter twenty-nine-a of this code, by any administra-
80 tor, agency or board within the department, without
81 which written consent no proposal of a rule shall have
82 any force or effect;

83 (13) Delegate to administrators such duties of the
84 secretary as the secretary may deem appropriate from
85 time to time to facilitate execution of the powers,
86 authority and duties delegated to the secretary; and

87 (14) Take any other action involving or relating to
88 internal management not otherwise prohibited by law.

89 (b) The secretaries of the departments hereby created
90 shall engage in a comprehensive review of the practices,
91 policies and operations of the agencies and boards
92 within their departments to determine the feasibility of
93 cost reductions and increased efficiency which may be
94 achieved therein, including, but not limited to, the
95 following:

96 (1) The elimination, reduction and restrictions in the
97 use of the state's vehicle or other transportation fleet;

98 (2) The elimination, reduction and restrictions in the
99 preparation of state government publications, including
100 annual reports, informational materials and promo-
101 tional materials;

102 (3) The termination or renegotiation of terms con-
103 tained in lease agreements between the state and private
104 sector for offices, equipment and services;

105 (4) The adoption of appropriate systems for account-
106 ing, including consideration of an accrual basis financial
107 accounting and reporting system;

108 (5) The adoption of revised procurement practices to
109 facilitate cost effective purchasing procedures, includ-
110 ing consideration of means by which domestic busi-
111 nesses may be assisted to compete for state government
112 purchases; and

113 (6) The computerization of the functions of the state
114 agencies and boards.

115 (c) Notwithstanding the provisions of subsections
116 (a) and (b) of this section, none of the powers granted
117 to the secretaries herein shall be exercised by the
118 secretary if to do so would violate or be inconsistent with
119 the provisions of any federal law or regulation, any
120 federal-state program or federally delegated program or
121 jeopardize the approval, existence or funding of any
122 such program, and the powers granted to the secretary
123 shall be so construed.

124 (d) The layoff and recall rights of employees within
125 the classified service of the state as provided in
126 subsections five and six, section ten, article six, chapter

127 twenty-nine of this code shall be limited to the organ-
128 izational unit within the agency or board and within the
129 occupational group established by the classification and
130 compensation plan for the classified service of the
131 agency or board in which the employee was employed
132 prior to the agency or board's transfer or incorporation
133 into the department: *Provided*, That the employee shall
134 possess the qualifications established for the job class.
135 The duration of recall rights provided in this subsection
136 shall be limited to two years or the length of tenure,
137 whichever is less. Except as provided in this subsection,
138 nothing contained in this section shall be construed to
139 abridge the rights of employees within the classified
140 service of the state as provided in sections ten and ten-
141 a, article six, chapter twenty-nine of this code or the
142 right of classified employees of the board of regents to
143 the procedures and protections set forth in article
144 twenty-six-b, chapter eighteen of this code.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 6. CIVIL SERVICE SYSTEM.

- §29-6-2. Definition of terms.
- §29-6-3. Classified service.
- §29-6-4. Classified-exempt service; additions to classified service; exemptions.
- §29-6-5. Creation of division of personnel; sections.
- §29-6-6. State personnel board created; members; term; quorum; vacancies; powers and duties.
- §29-6-7. Director of personnel; appointment; qualifications; powers and duties.
- §29-6-8. Duties of board generally.
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- §29-6-9a. State personnel advisory council.
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- §29-6-14. Certification of payrolls; wrongfully withholding certification of payroll.
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- §29-6-17a. Apprenticeship program.
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§29-6-23. Appropriations; cost of administering article; acceptance of grants or contribution.
§29-6-25. Implementation; report to governor and Legislature.

§29-6-2. Definition of terms.

1 As used in this article, unless the context indicates
2 otherwise, the term:

3 (a) "Administrator" means any person who fills a
4 statutorily created position within or related to an
5 agency or board (other than a board member) and who
6 is designated by statute as commissioner, deputy
7 commissioner, assistant commissioner, director, chancel-
8 lor, chief, executive director, executive secretary,
9 superintendent, deputy superintendent or other admini-
10 nistrative title, however designated;

11 (b) "Agency" means any administrative unit of state
12 government, including any authority, board, bureau,
13 commission, committee, council, division, section or
14 office;

15 (c) "Appointing authority" means a person or group
16 of persons authorized by an agency to make appoint-
17 ments to positions in the classified or classified-exempt
18 service;

19 (d) "Board" means the state personnel board created
20 by section six of this article;

21 (e) "Class" or "class of positions" means a group of
22 positions sufficiently similar in duties, training, expe-
23 rience and responsibilities, as determined by specifica-
24 tions, that the same qualifications, the same title and the
25 same schedule of compensation and benefits may be
26 equitably applied to each position in the group;

27 (f) "Classification plan" means the plan by which
28 positions in the classified service and classified-exempt
29 service have been allocated by class;

30 (g) "Classified-exempt service" means an employee
31 whose position satisfies the definitions for "class" and
32 "classify" but who is not covered under the civil service
33 system or employed by the board of regents;

34 (h) "Classified service" means an employee whose job
35 satisfies the definitions for "class" and "classify" and
36 who is covered under the civil service system;

37 (i) "Classify" means to group all positions in classes
38 and to allocate every position to the appropriate class in
39 the classification plan;

40 (j) "Director" means the head of the division of
41 personnel as appointed by section seven of this article;

42 (k) "Council" means the state personnel advisory
43 council created in section nine-a of this article;

44 (l) "Division" means the division of personnel herein
45 created;

46 (m) "Policymaking position" means a position in
47 which the person occupying it (1) acts as an advisor to,
48 or formulates plans for the implementation of broad
49 goals for an administrator or the governor, (2) is in
50 charge of major administrative component of the agency
51 and (3) reports directly and is directly accountable to an
52 administrator or the governor;

53 (n) "Position" means a particular job which has been
54 classified based on specifications;

55 (o) "Secretary" means the secretary of the department
56 of administration created in section two, article one,
57 chapter five-f of this code;

58 (p) "Specification" means a description of a class of
59 position which defines the class, provides examples of
60 work performed and the minimum qualifications
61 required for employment;

62 (q) "Veteran" means any person who has served in the
63 armed forces of the United States of America during
64 World War I (April 6, 1917-November 11, 1918), World
65 War II (December 7, 1941-December 31, 1946), the
66 Korean Conflict (June 27, 1950-January 31, 1955), or the

67 Vietnam Conflict (August 5, 1964-May 7, 1975), and who
68 has received a discharge under honorable conditions
69 from such service.

§29-6-3. Classified service.

1 The classified service includes all positions covered by
2 the civil service system as of the effective date of this
3 article, except as otherwise provided in this article.
4 Positions may be added to the classified service as
5 provided in section four of this article.

§29-6-4. Classified-exempt service; additions to classified service; exemptions.

1 (a) The classified-exempt service includes all positions
2 included in the classified-exempt service on the effective
3 date of this article.

4 (b) Except for the period commencing on the first day
5 of July, one thousand nine hundred ninety-two, and
6 ending on the first Monday after the second Wednesday
7 of the following January and except for the same periods
8 commencing in the year one thousand nine hundred
9 ninety-six, and in each fourth year thereafter, the
10 governor may, by executive order, with the written
11 consent of the state personnel board and the appointing
12 authority concerned, add to the list of positions in the
13 classified service, but such additions shall not include
14 any positions specifically exempted from coverage as
15 provided in this section.

16 (c) The following offices and positions are exempt
17 from coverage under the classified service:

18 (1) All judges, officers and employees of the judiciary;

19 (2) All members, officers and employees of the
20 Legislature;

21 (3) All officers elected by popular vote and employees
22 of the officer;

23 (4) All secretaries of departments and employees
24 within the office of a secretary;

25 (5) Members of boards and commissions and heads of
26 departments appointed by the governor or such heads

27 of departments selected by commissions or boards when
28 expressly exempt by law or board order;

29 (6) Excluding the policymaking positions in an
30 agency, one principal assistant or deputy and one
31 private secretary for each board or commission or head
32 of a department elected or appointed by the governor
33 or Legislature;

34 (7) All policymaking positions;

35 (8) Patients or inmates employed in state institutions;

36 (9) Persons employed in a professional or scientific
37 capacity to make or conduct a temporary and special
38 inquiry, investigation or examination on behalf of the
39 Legislature or a committee thereof, an executive
40 department or by authority of the governor;

41 (10) All employees of the office of the governor,
42 including all employees assigned to the executive
43 mansion;

44 (11) County road supervisors employed by the depart-
45 ment of highways or their successors;

46 (12) Part-time professional personnel engaged in
47 professional services without administrative duties and
48 personnel employed for ninety days or less during a
49 working year;

50 (13) Members and employees of the board of regents
51 or its successor agencies;

52 (14) Uniformed personnel of the division of public
53 safety; and

54 (15) Seasonal employees in the state forests, parks,
55 and recreational areas working less than 1040 hours per
56 calendar year.

57 (d) The Legislature finds that the holding of political
58 beliefs and party commitments consistent or compatible
59 with those of the governor contributes in an essential
60 way to the effective performance of and is an approp-
61 riate requirement for occupying certain offices or
62 positions in state government, such as the secretaries of

63 departments and the employees within their offices, the
64 heads of agencies appointed by the governor and, for
65 each such head of agency, a private secretary and one
66 principal assistant or deputy, all employees of the office
67 of the governor including all employees assigned to the
68 executive mansion, as well as any persons appointed by
69 the governor to fill policymaking positions and county
70 road supervisors or their successors, in that such offices
71 or positions are confidential in character and/or require
72 their holders to act as advisors to the governor or his
73 appointees, to formulate and implement the policies and
74 goals of the governor or his appointees, or to help the
75 governor or his appointees communicate with and
76 explain their policies and views to the public, the
77 Legislature and the press.

§29-6-5. Creation of division of personnel; sections.

1 (a) Effective the first day of July, one thousand nine
2 hundred eighty-nine, there is hereby created a division
3 of personnel within the executive branch.

4 (b) The division of personnel shall consist of the
5 following sections:

- 6 (1) Applicant services;
- 7 (2) Classification and compensation;
- 8 (3) Management development and training;
- 9 (4) Program evaluation and payroll;
- 10 (5) Employee services;
- 11 (6) Employee relations; and
- 12 (7) Administrative and staff services.

13 Each section shall be under the control of a section
14 chief to be appointed by the director who shall be
15 qualified by reason of exceptional training and expe-
16 rience in the field of activities of the respective section.
17 The director has authority to establish such additional
18 sections as may be determined necessary to carry out the
19 purpose of this article.

§29-6-6. State personnel board created; members; term; quorum; vacancies; powers and duties.

1 (a) There is hereby created within the division a state
2 personnel board which shall consist of five members
3 appointed by the governor with the advice and consent
4 of the Senate for terms of four years and until the
5 appointment of their successors: *Provided*, That of the
6 members first appointed, one shall be appointed for a
7 term of one year, one for two years, one for three years,
8 and one for four years. No more than three members
9 may be of the same political party. Three members of
10 the board constitute a quorum.

11 (b) A member of the board may not be removed from
12 office except for official misconduct, incompetence,
13 neglect of duty, gross immorality or malfeasance, and
14 then only in the manner prescribed in article six,
15 chapter six of this code for the removal by the governor
16 of state elected officers.

17 (c) Citizen members of the board shall each be paid
18 one hundred dollars for each day devoted to the work
19 of the board. Each member shall be reimbursed for all
20 reasonable and necessary expenses actually incurred in
21 the performance of his duties, except that in the event
22 the expenses are paid, or are to be paid, by a third party,
23 the members shall not be reimbursed by the state.

24 (d) The board shall elect one of its members as
25 chairperson and shall meet at such time and place as
26 shall be specified by the call of the chairman. At least
27 one meeting shall be held in each month. All meetings
28 shall be open to the public. Notice of each meeting shall
29 be given in writing to each member by the director at
30 least three days in advance of the meeting period.

31 (e) In addition to other powers and duties invested in
32 it by this article or by any other law, the board shall:

33 (1) Promulgate rules in accordance with chapter
34 twenty-nine-a of this code to implement the provisions
35 of this article;

36 (2) Interpret the application of this article to any
37 public body or entity;

38 (3) Authorize and conduct such studies, inquiries,
39 investigations or hearings in the operation of this article
40 as it deems necessary.

41 (f) The director or the board may subpoena and
42 require the attendance of witnesses in the production of
43 evidence or documents relevant to any proceeding under
44 this article.

§29-6-7. Director of personnel; appointment; qualifications; powers and duties.

1 (a) The governor shall appoint, by and with the advice
2 and consent of the Senate, the director who shall serve
3 at the will and pleasure of the governor and who shall
4 be paid an annual salary and be governed by the
5 provisions of section three, article two, chapter five-f of
6 this code. The director shall be a person knowledgeable
7 of the application of the merit principles in public
8 employment as evidenced by the obtainment of a degree
9 in business administration, personnel administration,
10 public administration or the equivalent and at least five
11 years of administrative experience in public personnel
12 administration.

13 (b) The director shall:

14 (1) Consistent with the provisions of this article
15 administer the operations of the division, allocating the
16 functions and activities of the division among sections
17 as the director may establish;

18 (2) Maintain a personnel management information
19 system necessary to carry out the provisions of this
20 article;

21 (3) Supervise payrolls and audit payrolls, reports or
22 transactions for conformity with the provisions of this
23 article;

24 (4) Plan, evaluate, administer and implement person-

25 nel programs and policies in state government and to
26 political subdivisions after agreement by the parties;

27 (5) Supervise the employee selection process and
28 employ performance evaluation procedures;

29 (6) Develop programs to improve efficiency and
30 effectiveness of the public service, including, but not
31 limited to, employee training, development, assistance
32 and incentives;

33 (7) Establish pilot programs and other projects for a
34 maximum of one year outside of the provisions of this
35 article, subject to approval by the board, to be included
36 in the annual report;

37 (8) Establish and provide for a public employee
38 interchange program and may provide for a voluntary
39 employee interchange program between public and
40 private sector employees;

41 (9) Establish an internship program;

42 (10) Assist the governor and secretary of the depart-
43 ment of administration in general work force planning
44 and other personnel matters;

45 (11) Make an annual report to the governor and
46 Legislature and all other special or periodic reports as
47 may be required;

48 (12) Assess cost for special or other services;

49 (13) Recommend rules to the board for implementa-
50 tion of this article; and

51 (14) Conduct schools, seminars or classes regarding
52 handling of complaints, disciplinary matters and
53 operation of the state personnel board for supervisory
54 employees of the state.

§29-6-8. Duties of board generally.

1 In addition to the duties expressly set forth elsewhere
2 in this article, the board shall:

3 (1) Represent the public interest in the improvement
4 of personnel administration in the classified service.

5 (2) Advise the governor, the secretary, and the
6 director on problems concerning personnel
7 administration.

8 (3) Foster the interest of institutions of learning and
9 of industrial, civic, professional and employee organiza-
10 tions in the improvement of personnel standards in the
11 classified service.

12 (4) Make any investigation which it may consider
13 desirable concerning the administration of personnel in
14 the classified service and make recommendations to the
15 director with respect thereto.

16 (5) Approve the budget as prepared by the director
17 for administration of this article before submission to
18 the division of finance and administration.

**§29-6-9. Civil service commission abolished; transfer of
duties and responsibilities; rule of construc-
tion; transfer of employees, equipment, and
records; continuation of programs, protections
and rules.**

1 (a) The civil service commission is hereby abolished.
2 All duties and responsibilities heretofore imposed upon
3 the civil service commission are hereby imposed upon
4 the state personnel board, and all duties and reponsibil-
5 ities heretofore imposed upon the director of the civil
6 service system are hereby imposed upon the director of
7 the division of personnel. Except as used in this section,
8 the words "civil service commission" or "commission,"
9 when used in this article, shall refer to and mean the
10 state personnel board. Whenever reference is made to
11 the director of the civil service commission, the power
12 or duty prescribed shall apply to the director of the
13 division of personnel.

14 (b) Persons employed on the effective date of this
15 article by the civil service commission, the duties and
16 functions of which have been transferred to the division

17 of personnel, are hereby assigned and transferred to the
18 division of personnel. It is the intent of this article to
19 consolidate into the division of personnel those agencies
20 and employees performing personnel functions which
21 will be facilitated by their consolidation, except as
22 excluded in section four of this article. On the effective
23 date of this article, all personnel payroll positions and
24 employees occupying those positions necessary to
25 effectuate the purposes of this article shall be trans-
26 ferred to the division of personnel: *Provided*, That in
27 order to provide for a smooth transition, the governor
28 may, by executive order, determine those positions and
29 employees that shall be transferred and provide that the
30 transfers provided for in this subsection take effect no
31 later than the last day of September, one thousand nine
32 hundred eighty-nine.

33 (c) Upon the transfer, if any, of any personnel payroll
34 positions as provided in subsection (b) of this section
35 from the division of highways, the division of motor
36 vehicles, the workers' compensation fund, the public
37 service commission, or any other department or division
38 operating from special revenue funds or federal funds,
39 such department or division shall pay to the division of
40 personnel the costs of personnel services, as determined
41 by the secretary of the department of administration,
42 provided to their respective divisions. When no specific
43 appropriation is made for this purpose, such payments
44 shall be made from personal services, annual increment,
45 and employee benefit appropriations to the department
46 or division. Upon the transfer of any personnel payroll
47 positions to the division of personnel from any depart-
48 ment or division funded from general revenues of the
49 state, the governor is authorized and empowered to
50 order the transfer of funds for those positions.

51 (d) The abolishment of the civil service commission
52 and the creation of the division of personnel shall in no
53 way hinder any ongoing programs, benefits, litigation,
54 or grievance procedures. Employees in the classified
55 service who have gained permanent status as of the
56 effective date of this article will not be subject to further
57 qualifying examination by reason of any transfer

58 required by the provisions of this section, except when
59 they wish to qualify for promotion. Nothing contained
60 in this section shall be construed to abridge the rights
61 of employees within the classified service of the state to
62 the procedures and protections set forth in sections ten
63 and ten-a of this article, except as provided in subsection
64 (d), section two, article two, chapter five-f of this code.

65 (e) On the effective date of this article, all equipment
66 and records necessary to effectuate the purposes of this
67 article shall be transferred to the division of personnel:
68 *Provided*, That in order to provide for a smooth
69 transition, the governor may, by executive order,
70 determine the equipment and records to be transferred
71 and provide that the transfers provided for in this
72 subsection take effect no later than the last day of
73 September, one thousand nine hundred eighty-nine.

74 (f) The rules of the civil service commission shall
75 remain in force and effect until promulgation of new or
76 additional rules by the state personnel board.

77 (g) Nothing contained in this article shall be
78 construed to preclude the reclassification or reallocation
79 of positions in accordance with procedures set forth in
80 section ten of this article.

§29-6-9a. State personnel advisory council.

1 (a) There is hereby created the state personnel
2 advisory council, which consists of eleven members
3 appointed by the governor. Six members shall be
4 classified employees and two, classified-exempt em-
5 ployees. Of the remaining three members, one shall be
6 appointed from a list of three persons recommended by
7 the American federation of state, county, and municipal
8 employees; one, from a list of three persons recom-
9 mended by the communication workers of America; and
10 one, from a list of three persons recommended by
11 district 1199, national union of hospital and health care
12 employees, AFL-CIO. Members of the council shall
13 serve for a term concurrent with that of the governor.

14 (b) The state personnel advisory council shall:

15 (1) Advise the director and the board in the develop-
16 ment of comprehensive policies and programs for the
17 improvement of personnel administration in the state;

18 (2) Assist in the formulation of rules and standards
19 relating to the state system of personnel administration;

20 (3) Assist in the promotion of public understanding of
21 the purposes, policies and practices of the state system
22 of personnel administration.

23 (c) Members of the council shall receive no compen-
24 sation, but shall be reimbursed for their actual and
25 necessary expenses.

§29-6-10. Rules of division.

1 The board shall have the authority to promulgate,
2 amend or repeal rules, in accordance with chapter
3 twenty-nine-a of this code, to implement the provisions
4 of this article.

5 (1) For the preparation, maintenance and revision of
6 a position classification plan for all positions in the
7 classified service and a position classification plan for
8 all positions in the classified-exempt service, based upon
9 similarity of duties performed and responsibilities
10 assumed, so that the same qualifications may reasonably
11 be required for and the same schedule of pay may be
12 equitably applied to all positions in the same class. The
13 position classification plan for classified-exempt service
14 shall become effective not later than the first day of
15 July, one thousand nine hundred seventy-nine. Except
16 for persons employed by the board of regents, all
17 persons receiving compensation in the form of a wage
18 or salary, funded either in part or in whole by the state,
19 shall be included in either the position classification
20 plan for classified service or classified-exempt service.
21 After each such classification plan has been approved
22 by the board, the director shall allocate the position of
23 every employee in the classified service to one of the
24 classes in the classified plan and the position of every
25 employee in the classified-exempt service to one of the
26 positions in the classified-exempt plan. Any employee

27 affected by the allocation of a position to a class shall,
28 after filing with the director of personnel a written
29 request for reconsideration thereof in such manner and
30 form as the director may prescribe, be given a reason-
31 able opportunity to be heard thereon by the director.
32 The interested appointing authority shall be given like
33 opportunity to be heard.

34 (2) For a pay plan for all employees in the classified
35 service, after consultation with appointing authorities
36 and the state fiscal officers, and after a public hearing
37 held by the board. Such pay plan shall become effective
38 only after it has been approved by the governor after
39 submission to him by the board. Amendments to the pay
40 plan may be made in the same manner. Each employee
41 shall be paid at one of the rates set forth in the pay plan
42 for the class of position in which he is employed. The
43 principle of equal pay for equal work in the several
44 agencies of the state government shall be followed in the
45 pay plan as established hereby.

46 (3) For open competitive examinations to test the
47 relative fitness of applicants for the respective positions
48 in the classified service. Such examinations need not be
49 held until after the rules have been adopted, the service
50 classified and a pay plan established, but shall be held
51 not later than one year after this article takes effect.
52 Such examinations shall be announced publicly at least
53 fifteen days in advance of the date fixed for the filing
54 of applications therefor, and may be advertised through
55 the press, radio and other media. The director may,
56 however, in his discretion, continue to receive applica-
57 tions and examine candidates long enough to assure a
58 sufficient number of eligibles to meet the needs of the
59 service; and may add the names of successful candidates
60 to existing eligible lists in accordance with their
61 respective ratings.

62 An additional five points shall be awarded to the score
63 of any examination successfully completed by a veteran.
64 A disabled veteran shall be entitled to an additional ten
65 points, rather than five points as aforesaid, upon
66 successful completion of any examination.

67 (4) For promotions within the classified service which
68 shall give appropriate consideration to the applicant's
69 qualifications, record of performance and his score on
70 a written examination, when such examination is
71 practicable. In filling vacancies an effort should be
72 made to achieve a balance between promotion from
73 within the service and the introduction into the service
74 of qualified new employees. An advancement in rank or
75 grade or an increase in salary beyond the maximum
76 fixed for the class shall constitute a promotion.

77 (5) For layoffs by classification for reason of lack of
78 funds or work, or abolition of a position, or material
79 changes in duties or organization, or any loss of position
80 because of the provisions of this subdivision and for
81 recall of employees so laid off, consideration shall be
82 given to an employee's seniority as measured by
83 permanent employment in the classified service or a
84 state agency. In the event that the agency wishes to lay
85 off a more senior employee, the agency must demon-
86 strate that the senior employee cannot perform any
87 other job duties held by less senior employees within
88 that agency in the job class, or any other equivalent or
89 lower job class for which the senior employee is
90 qualified: *Provided*, That if an employee refuses to
91 accept a position in a lower job class, such employee
92 shall retain all rights of recall as hereinafter provided.

93 (6) For recall of employees, recall shall be by reverse
94 order of layoff to any job class that the employee has
95 previously held or a lower class in the series within the
96 agency as that job class becomes vacant. An employee
97 will retain his place on the recall list for the same period
98 of time as his seniority on the date of his layoff, or for
99 a period of two years, whichever is less. No new
100 employees shall be hired for any vacancy in his or her
101 job class or in a lower job class in the series until all
102 eligible employees on layoff are given the opportunity
103 to refuse that job class. An employee shall be recalled
104 onto jobs within the county wherein his last place of
105 employment is located or within a county contiguous
106 thereto. Any laid-off employee who is eligible for a
107 vacant position shall be notified by certified mail of the

108 vacancy. It shall be the responsibility of the employee
109 to notify the agency of any change in his address.

110 (7) For the establishment of eligible lists for appoint-
111 ment and promotion within the classified service, upon
112 which lists shall be placed the names of successful
113 candidates in the order of their relative excellence in the
114 respective examinations. Eligibility for appointment
115 from any such list shall continue not longer than three
116 years. An appointing authority shall make his selection
117 from the top ten names on the appropriate lists of
118 eligibles, or may choose any person scoring at or above
119 the ninetieth percentile on the examination.

120 (8) For the rejection of candidates or eligibles within
121 the classified service who fail to comply with reasonable
122 requirements in regard to such factors as age, physical
123 condition, character, training and experience, who are
124 addicted to alcohol or narcotics, or who have attempted
125 any deception or fraud in connection with an examina-
126 tion, or where in the judgment of the board there is
127 reasonable doubt of the loyalty of the candidate or
128 allegiance to the nation.

129 (9) For a period of probation not to exceed one year
130 before appointment or promotion may be made complete
131 within the classified service.

132 (10) For provisional employment without competitive
133 examination within the classified service when there is
134 no appropriate eligible list available. No such provi-
135 sional employment may continue longer than six
136 months, nor shall successive provisional appointments
137 be allowed, except during the first year after the
138 effective date of this article, in order to avoid stoppage
139 of orderly conduct of the business of the state.

140 (11) For keeping records of performance of all
141 employees in the classified service, which service
142 records may be considered in determining salary
143 increases and decreases provided in the pay plan; as a
144 factor in promotion tests; as a factor in determining the
145 order of layoffs because of lack of funds or work and
146 in reinstatement; and as a factor in demotions, dis-
147 charges and transfers.

148 (12) For discharge or reduction in rank or grade only
149 for cause of employees in the classified service.
150 Discharge or reduction of these employees shall take
151 place only after the person to be discharged or reduced
152 has been presented with the reasons for such discharge
153 or reduction stated in writing, and has been allowed a
154 reasonable time to reply thereto in writing, or upon
155 request to appear personally and reply to the appointing
156 authority or his deputy. The statement of reasons and
157 the reply shall be filed as a public record with the
158 director. Notwithstanding the foregoing provisions of
159 this subdivision, no permanent employee shall be
160 discharged from the classified service for absenteeism
161 upon using all entitlement to annual leave and sick leave
162 when such use has been due to illness or injury as
163 verified by a physician's certification or for other
164 extenuating circumstances beyond the employee's
165 control unless his disability is of such a nature as to
166 permanently incapacitate him from the performance of
167 the duties of his position. Upon exhaustion of annual
168 leave and sick leave credits for the reasons specified
169 herein and with certification by a physician that the
170 employee is unable to perform his duties, a permanent
171 employee shall be granted a leave of absence without
172 pay for a period not to exceed six months if such
173 employee is not permanently unable to satisfactorily
174 perform the duties of his position.

175 (13) For such other rules and administrative regula-
176 tions, not inconsistent with this article, as may be proper
177 and necessary for its enforcement.

178 (14) The board shall review and approve by rules and
179 regulations the establishment of all classified-exempt
180 positions to assure consistent interpretation of the
181 provisions of this article.

182 The provisions of this section are subject to any
183 modifications contained in chapter five-f of this code.
184 The board may include in the rules provided for in this
185 article such provisions as are necessary to conform to

186 regulations and standards of any federal agency
187 governing the receipt and use of federal grants-in-aid by
188 any state agency, anything in this article to the contrary
189 notwithstanding. The board and the director shall see
190 that rules and practices meeting such standards are in
191 effect continuously after the effective date of this article.

§29-6-11. Duty to furnish facilities for division's use.

1 All officers and employees of the state and of munic-
2 ipalities and political subdivisions of the state shall
3 allow the division the reasonable use of public buildings
4 under their control, and furnish heat, light and furni-
5 ture, for any examination, hearing or investigation
6 authorized by this article. The division shall pay to a
7 municipality or political subdivision the reasonable cost
8 of any such facilities furnished by it.

§29-6-12. Duties of state officers and employees; legal proceedings to secure compliance with article and rules.

1 All officers and employees of the state shall comply
2 with and aid in all proper ways in carrying out the
3 provisions of this article and the rules and orders
4 thereunder. All officers and employees shall furnish any
5 records or information which the director may request
6 for any purpose of this article. The director may
7 institute and maintain any action or proceeding at law
8 or in equity that he considers necessary or appropriate
9 to secure compliance with this article and the rules and
10 orders thereunder.

§29-6-14. Certification of payrolls; wrongfully withholding certification of payroll.

1 (a) No state disbursing or auditing officer shall make
2 or approve or take any part in making or approving any
3 payment for personal service to any person holding a
4 position in the classified service unless the payroll
5 voucher or account of such pay bears the certification
6 of the director, or of his authorized agent, that the
7 persons named therein have been appointed and em-
8 ployed in accordance with the provisions of this article

9 and the rules, regulations and orders thereunder. The
10 director may for proper cause withhold certification
11 from an entire payroll or from any specific item or items
12 thereon. The director may, however, provide that
13 certification of payrolls may be made once every six
14 months, and such certification shall remain in effect
15 except in the case of any officer or employee whose
16 status has changed after the last certification of his
17 payroll. In the latter case no voucher for payment of
18 salary to such employee shall be issued or payment of
19 salary made without further certification by the
20 director.

21 (b) If the director wrongfully withholds certification
22 of the payroll voucher or account of any employee, such
23 employee may maintain a proceeding in the courts to
24 compel the director to certify such payroll voucher or
25 account.

§29-6-16. Records of division.

1 The records of the division, except such records as the
2 rules may properly require to be held confidential for
3 reasons of public policy, shall be public records and
4 shall be open to public inspection, subject to reasonable
5 regulations as to the time and manner of inspection
6 which may be prescribed by the director.

**§29-6-17. Services to political subdivisions; cooperation
with agencies for other jurisdictions.**

1 (a) Subject to the approval of the board the director
2 may enter into agreements with any municipality or
3 other political subdivision of the state to furnish services
4 and facilities of the division to such municipality or
5 political subdivision in the administration of its person-
6 nel on merit principles. Any such agreements shall
7 provide for the reimbursement to the state of the
8 reasonable cost of the services and facilities furnished,
9 as determined by the director. All municipalities and
10 political subdivisions of the state are hereby authorized
11 to enter into such agreements. Subject to the approval
12 of the board, the director may enter into an agreement
13 with the state department of health for the inclusion of

14 personnel of local health departments under the classi-
15 fied service system established by this article.

16 (b) The director may cooperate with governmental
17 agencies for other jurisdictions charged with personnel
18 administration in conducting joint tests and establishing
19 joint lists from which eligibles shall be certified for
20 appointment in accordance with the provisions of this
21 article.

§29-6-17a. Apprenticeship program.

1 (a) The division of personnel shall develop and
2 monitor apprenticeship programs for all state agencies
3 that have employees working in apprenticeable trades
4 which are, or may be recognized by, the United States
5 department of labor, bureau of apprenticeship and
6 training.

7 (b) These apprenticeship programs will be developed
8 and conducted in a manner that will assure meeting the
9 national minimum requirements of quality and be
10 registered with the United States department of labor,
11 bureau of apprenticeship and training.

12 (c) The director or his designee, in cooperation with
13 the participating appointing authorities within each
14 agency, shall develop and annually revise by the thirty-
15 first day of December a list of employment classifica-
16 tions appropriate for apprenticeship training, which
17 may include, but not be limited to, the following
18 classifications: Computer service technicians; legal
19 assistants; computer systems analysts; computer pro-
20 grammers; computer operators; office machine repair-
21 ers; physical therapy assistants; electrical engineers;
22 civil engineering technicians; peripheral edp equipment
23 operators; insurance clerks, medical, electrical and
24 electronic technicians; occupational therapists; surveyor
25 helpers; credit clerks, banking and insurance; physical
26 therapists; employment interviewers; mechanical engi-
27 neers; mechanical engineering technicians; and com-
28 pression and injection mold machine operators.

29 (d) The chief administrative officer of each agency in

30 cooperation with the director or his designee shall
31 establish procedures for the coordination of apprentice-
32 ship programs developed in accordance with this
33 section.

34 (e) Subject to the approval of the director and the
35 procedures established, each participating agency shall
36 determine the location and positions in which apprent-
37 iceships are to be established.

38 (f) The director, or his designee, shall make an annual
39 report to the Legislature and shall include in such
40 report the following:

41 (1) A review of the development and operation of
42 apprenticeship programs;

43 (2) The current list of apprenticeable classifications;

44 (3) A summary of the agencies and types of positions
45 involved;

46 (4) A summary of registered apprenticeships;

47 (5) The number of persons who applied for apprent-
48 iceship positions under this section;

49 (6) The number of persons accepted into the apprent-
50 iceship programs established in accordance with this
51 section;

52 (7) The number of persons who successfully completed
53 and received a certificate of completion from the United
54 States department of labor, bureau of apprenticeship
55 and training;

56 (8) The number of persons who failed to complete
57 apprenticeships in accordance with this section;

58 (9) The number of persons who remain employed
59 after successfully completing apprenticeships; and

60 (10) A summary of characteristics of applicants and
61 participants in the program deemed pertinent to the
62 director.

63 (g) The recruitment, selection and training of ap-
64 prentices during their apprenticeship shall be without
65 discrimination because of race, color, religion, national
66 origin or sex. The division will take affirmative action
67 to provide equal opportunity in apprenticeship pro-
68 grams and will operate the program to assure equal
69 employment in apprenticeship.

70 (h) No contract between the state and a vendor,
71 whereby persons who have participated in the apprent-
72 iceship program are to be hired, may be approved by
73 the attorney general unless and until said contract
74 contains a statement that the vendor will not discrim-
75 inate in employment or public accommodation because
76 of race, religion, color, national origin, ancestry, sex,
77 age, blindness or handicap of any individual.

**§29-6-17b. Advisory board for the apprenticeship
program.**

1 In order to better accomplish the goals of this
2 program the apprenticeship advisory board is continued
3 and reestablished. Its members shall include the
4 commissioner of labor or a designee, the commissioner
5 of finance and administration or a designee, the state
6 superintendent of the department of education or a
7 designee, two employees of the state who are covered
8 under the civil service system, and one private citizen,
9 with the employee and citizen members to be appointed
10 by the governor. The employees and the private citizen
11 members shall serve without compensation for two
12 years, after which they may be reappointed. The
13 chairman of the board shall be elected by the board as
14 a whole.

15 The apprenticeship advisory board shall meet at least
16 semiannually, at the call of the chairman, for the
17 purpose of receiving, reviewing and evaluating reports
18 from the director on the achievements and deficiencies
19 of the program. The apprenticeship advisory board may
20 seek the advice and counsel from appropriate members
21 of the United States department of labor who may be
22 knowledgeable about such apprenticeship programs,

23 and may also prepare written recommendations to the
24 director, secretary, or governor on ways to improve the
25 apprenticeship program.

§29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.

1 (a) No person shall be appointed or promoted to or
2 demoted or dismissed from any position in the classified
3 service or in any way favored or discriminated against
4 with respect to such employment because of his political
5 or religious opinions or affiliations or race; but nothing
6 herein shall be construed as precluding the dismissal of
7 any employee who may be engaged in subversive
8 activities or found disloyal to the nation.

9 (b) No person shall seek or attempt to use any political
10 endorsement in connection with any appointment in the
11 classified service.

12 (c) No person shall use or promise to use, directly or
13 indirectly, any official authority or influence, whether
14 possessed or anticipated, to secure or attempt to secure
15 for any person an appointment or advantage in appointment
16 to a position in the classified service, or an increase
17 in pay or other advantage in employment in any such
18 position, for the purpose of influencing the vote or
19 political action of any person or for any consideration.

20 (d) No employee in the classified service or member
21 of the board or the director shall, directly or indirectly,
22 solicit or receive any assessment, subscription or
23 contribution, or perform any service for any political
24 party, committee or candidate for compensation, other
25 than for expenses actually incurred, or in any manner
26 take part in soliciting any such assessment, subscription,
27 contribution or service of any employee in the classified
28 service.

29 (e) Notwithstanding any other provision of this code,
30 no employee in the classified service shall:

31 (1) Use his official authority or influence for the

32 purpose of interfering with or affecting the result of an
33 election or a nomination for office;

34 (2) Directly or indirectly coerce, attempt to coerce,
35 command or advise a state or local officer or employee
36 to pay, lend or contribute anything of value to a party,
37 committee, organization, agency or person for political
38 purposes; or

39 (3) Be a candidate for any national or state paid
40 public office or court of record; or hold any paid public
41 office; or be a candidate or delegate to any state or
42 national political party convention, a member of any
43 national, state or local committee of a political party, or
44 a financial agent or treasurer within the meaning of the
45 provisions of section three, four or five-e, article eight,
46 chapter three of this code. Other types of partisan or
47 nonpartisan political campaigning and management not
48 inconsistent with the provisions of this subdivision and
49 with the provisions of subsection (d) of this section shall
50 be permitted.

51 (f) Political participation pertaining to constitutional
52 amendments, referendums, approval of municipal
53 ordinances or activities shall not be deemed to be
54 prohibited by the foregoing provisions of this section.

55 (g) Any classified employee who becomes a candidate
56 for any paid public office as permitted by this section
57 shall be placed on a leave of absence without pay for the
58 period of such candidacy, commencing upon the filing
59 of the certificate of candidacy.

§29-6-21. Acts prohibited.

1 (a) No person shall make any false statement, certifi-
2 cate, mark, rating or report with regard to any test,
3 certification or appointment made under any provisions
4 of this article or in any manner commit or attempt to
5 commit any fraud preventing the impartial execution of
6 this article and the rules.

7 (b) No person shall, directly or indirectly, give,
8 render, pay, offer, solicit or accept any money, or other

9 valuable consideration for or on account of any certifi-
10 cation, appointment, proposed appointment, promotion
11 or proposed promotion to, or any advantage in, a position
12 in the classified service.

13 (c) No employee of the division, examiner, or other
14 person shall defeat, deceive or obstruct any person in his
15 right to examination, eligibility, certification or appoint-
16 ment under this article, or furnish to any person any
17 special or secret information for the purpose of affecting
18 the rights or prospects of any person with respect to
19 employment in the classified service.

**§29-6-23. Appropriations; cost of administering article;
acceptance of grants or contribution.**

1 (a) Appropriations shall be made from the general
2 fund to the division of personnel to meet the cost of
3 administering the provisions of this article.

4 (b) The director shall maintain accurate records
5 reflecting the cost of administering the provisions of this
6 article.

7 (c) The division is authorized and directed to accept
8 on behalf of the state any grant or contribution, federal
9 or otherwise, made to assist in meeting the cost of
10 carrying out the purposes of this article.

**§29-6-25. Implementation; report to governor and
Legislature.**

1 (a) General implementation is to be completed no
2 later than twelve months following the effective date of
3 this article.

4 (b) There is hereby created an implementation task
5 force to assist in the general implementation of this
6 article and the establishment of the division. The task
7 force shall consist of twelve members and the director
8 of personnel. Task force members shall be appointed by
9 the governor.

10 (c) The director shall provide a report to the secretary
11 of the department of administration, who shall then,

- 12 within one year from the effective date of this article,
13 report to the governor and Legislature on the progress
14 of the implementation of this article.

CHAPTER 30

(S. B. 615—Originating in the Committee on Finance)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

- §1. Finding and declaring certain claims against the alcohol beverage control commissioner; attorney general; nonintoxicating beer commission; department of corrections; department of culture and history; department of education; educational broadcasting authority; department of finance and administration; governor's office; department of health; department of health-office of the chief medical examiner; department of highways; human rights commission; department of human services; department of motor vehicles; department of natural resources; board of probation and parole; public employees insurance agency; department of public safety; public service commission; board of regents; state board of rehabilitation; secretary of state; state tax department; treasurer's office; water resources board; and workers' compensation fund, to be moral obligations of the state and directing payment thereof; and finding and declaring a claim against the state for unjust arrest and imprisonment to be a moral obligation of the state and directing payment thereof.

- 1 The Legislature has considered the findings of fact

2 and recommendations reported to it by the court of
 3 claims concerning various claims against the state and
 4 agencies thereof, and in respect to each of the following
 5 claims the Legislature adopts those findings of fact as
 6 its own, and in respect of certain claims herein, the
 7 Legislature has independently made findings of fact and
 8 determinations of award and hereby declares it to be the
 9 moral obligation of the state to pay each such claim in
 10 the amount specified below, and directs the auditor to
 11 issue warrants for the payment thereof out of any fund
 12 appropriated and available for the purpose.

13 (a) *Claims against the*
 14 *Alcohol Beverage Control Commissioner:*

15 (TO BE PAID FROM SPECIAL REVENUE FUND)

16	(1) The City of Charleston	\$	292.65
17	(2) Riley's Department Store, Inc. ...	\$	235.22

18 (b) *Claims against the Attorney General:*

19 (TO BE PAID FROM GENERAL REVENUE FUND)

20	(1) Paul T. Camilletti	\$	5,600.50
21	(2) Career Track, Inc.	\$	85.00
22	(3) West Publishing Company	\$	7,282.69

23 (c) *Claims against the*
 24 *Nonintoxicating Beer Commission:*

25 (TO BE PAID FROM GENERAL REVENUE FUND)

26	(1) AT & T Communications, Inc. ...	\$	3.22
27	(2) Atomic Distributing Company ..	\$	53.46

28 (d) *Claims against the*
 29 *Department of Corrections:*

30 (TO BE PAID FROM GENERAL REVENUE FUND)

31	(1) AT & T Communications, Inc. ...	\$	174.48
32	(2) Sanford Clegg, III	\$	4,691.20
33	(3) Davis Memorial Hospital	\$	560.45
34	(4) John XXIII, Pastoral Center	\$	298.00
35	(5) Levin Auto Parts, Inc.	\$	752.79
36	(6) National Laboratories	\$	946.09
37	(7) Samuel K. Roberts	\$	260.00
38	(8) Lee E. Smith, M.D. and		
39	Robert M. Jones, M.D., P.C. ...	\$	2,045.00

40	(9)	Thoracic and Cardiovascular		
41		Surgery, Inc.	\$	764.79
42	(10)	Tincher Dental Laboratory	\$	216.77
43	(11)	Wheeling Clinic	\$	2,025.00
44	(12)	Williams Generics, Inc.	\$	588.19
45	(13)	Xerox Corporation	\$	699.35
46	(14)	Youth Services System, Inc.	\$	290.22

47 (e) *Claim against the*
 48 *Department of Culture and History:*

49 (TO BE PAID FROM GENERAL REVENUE FUND)

50	(1)	AT & T Communications, Inc. ...	\$	324.06
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51 (f) *Claims against the*
 52 *Department of Education:*

53 (TO BE PAID FROM GENERAL REVENUE FUND)

54	(1)	Bell Atlanticom Systems, Inc. ...	\$	3,141.12
55	(2)	Sherry Lynne Perkey	\$	199.00
56	(3)	Mary Pheasant	\$	204.00
57	(4)	Stephanie R. Short	\$	210.00
58	(5)	Lucy Snyder	\$	2,032.00
59	(6)	Rodney C. Stansberry	\$	504.00

60 (g) *Claims against the*
 61 *Educational Broadcasting Authority:*

62 (TO BE PAID FROM GENERAL REVENUE FUND)

63	(1)	Myra Lowery	\$	700.00
64	(2)	Wesco Equipment, Inc.	\$	6,973.50

65 (h) *Claim against the*
 66 *Department of Finance and Administration:*

67 (TO BE PAID FROM GENERAL REVENUE FUND)

68	(1)	Xerox Corporation	\$	5,050.57
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69 (i) *Claims against the Governor's Office:*

70 (TO BE PAID FROM GENERAL REVENUE FUND)

71	(1)	John P. Bailey	\$	2,036.25
72	(2)	Frederick E. Gardner	\$	1,532.50
73	(3)	Robert W. Kagler	\$	5,615.00
74	(4)	Michael E. Kelly	\$	7,599.50

75	(5)	Jeffrey V. Kessler	\$	12,390.00
76	(6)	J. Thomas Madden	\$	5,229.20
77	(7)	Michael W. McGuane	\$	6,065.00
78	(8)	Town of Harrisville	\$	40,500.00
79	(j) <i>Claims against the</i>			
80	<i>Department of Health:</i>			
81	(TO BE PAID FROM GENERAL REVENUE FUND)			
82	(1)	David M. Baker	\$	996.45
83	(2)	Patricia Butcher	\$	39.65
84	(3)	Walter Allen Clark, II	\$	30.55
85	(4)	Beulah Cohernour	\$	447.74
86	(5)	Donald Cohernour	\$	68.34
87	(6)	Gladys Sluss Cox	\$	950.61
88	(7)	Erma Hagerman	\$	19.79
89	(8)	Rebecca Hassan	\$	663.31
90	(9)	Wendell Hiett	\$	20.00
91	(10)	Joseph N. Hurley	\$	58.00
92	(11)	Lee A. Johnson	\$	1,799.20
93	(12)	Sadie Jones	\$	13.75
94	(13)	Steve Lambe	\$	10.00
95	(14)	Sharon Lansdale	\$	1,465.40
96	(15)	Manpower Temporary Services ...	\$	731.50
97	(16)	Sunil Mehta	\$	1,760.10
98	(17)	Chloie Lynn Osborne	\$	10.00
99	(18)	Otis Elevator Company	\$	971.84
100	(19)	Warren R. Pistey	\$	50.00
101	(20)	Potomac Comprehensive		
102		Diagnostic and		
103		Guidance Center, Inc.	\$	106,354.00
104	(21)	Alana Rose	\$	1,455.49
105	(22)	Gordon Eric Runyon	\$	217.96
106	(23)	Marsha Runyon	\$	286.73
107	(24)	Kellie Saunders	\$	86.95
108	(25)	Mildred Sayre	\$	1,555.70
109	(26)	Stonewall Jackson		
110		Memorial Hospital	\$	3,334.58
111	(27)	Genevieve Taylor	\$	2,965.94
112	(28)	Timothy Tolliver	\$	180.95
113	(29)	Xerox Corporation	\$	2,595.80

114	(k)	<i>Claims against the</i>		
115		<i>Department of Health—Office</i>		
116		<i>of the Chief Medical Examiner:</i>		
117		(TO BE PAID FROM GENERAL REVENUE FUND)		
118	(1)	Joe Adams	\$	50.00
119	(2)	James C. Bosley, M.D.	\$	150.00
120	(3)	John J. Keefe, M.D.	\$	150.00
121	(4)	James M. Marsh, M.D.	\$	150.00
122	(5)	J. Keith Pickens, M.D.	\$	250.00
123	(l)	<i>Claims against the</i>		
124		<i>Department of Highways:</i>		
125		(TO BE PAID FROM STATE ROAD FUND)		
126	(1)	Aetna Casualty & Surety,		
127		subrogee of		
128		Dianna Rinehart Jones	\$	301.20
129	(2)	Carol J. Baker	\$	90.00
130	(3)	Barboursville Bridge Company ..	\$	136,426.00
131	(4)	Alice Hope Bomboy and		
132		David Lynn Bomboy	\$	694.67
133	(5)	Barry M. Doss and Kathy L. Doss	\$	100.00
134	(6)	Diane Earliwine	\$	259.58
135	(7)	William Ray Fitzwater	\$	32,040.00
136	(8)	Helen Hanson and		
137		Howard Hanson	\$	2,500.00
138	(9)	Jo Ellen Lagowski	\$	275.00
139	(10)	The Lane Construction		
140		Corporation	\$	517,478.00
141	(11)	Jarvey G. Marcum	\$	7,200.00
142	(12)	Roy Paul Messer	\$	10,000.00
143	(13)	Dave Minch and Barbara Minch	\$	100.96
144	(14)	John M. Pratt	\$	258.86
145	(15)	State Farm Mutual Automobile		
146		Insurance Company, as		
147		subrogee of Pamela Reid		
148		and Howard Reid	\$	350.30
149	(16)	Peggy Stover	\$	270.60
150	(17)	Jeanette E. Straw	\$	388.66
151	(18)	Lawrence Terrell		
152		and Sarah Terrell	\$	9,000.00
153	(19)	Virgie Mae Varney	\$	15,000.00

154 (20) William Ernest Varney \$ 5,000.00

155 (m) *Claims against the*
156 *Human Rights Commission:*

157 (TO BE PAID FROM GENERAL REVENUE FUND)

158 (1) AAA Court Reporting \$ 115.05

159 (2) Phyllis H. Edens, CCR, Inc. \$ 519.70

160 (3) Sheriff-Treasurer/Marion
161 County \$ 5.00

162 (4) Paul R. Stone \$ 1,306.23

163 (n) *Claims against the*
164 *Department of Human Services:*

165 (TO BE PAID FROM SPECIAL REVENUE FUND)

166 (1) Rolando Ugalde Layos \$ 32,000.00

167 (2) Olympic Center-Preston \$ 1,100.00

168 (o) *Claim against the*
169 *Department of Motor Vehicles:*

170 (TO BE PAID FROM STATE ROAD FUND)

171 (1) Harold Casto \$ 400.00

172 (p) *Claim against the*
173 *Department of Natural Resources:*

174 (TO BE PAID FROM GENERAL REVENUE FUND)

175 (1) Motorola C & E, Inc. \$ 1,773.99

176 (q) *Claim against the*
177 *Board of Probation and Parole:*

178 (TO BE PAID FROM GENERAL REVENUE FUND)

179 (1) AT & T Communications, Inc. ... \$ 2.67

180 (r) *Claim against the Public*
181 *Employees Insurance Agency:*

182 (TO BE PAID FROM GENERAL REVENUE FUND)

183 (1) West Virginia University
184 Hospitals, Inc. \$ 15,445.72

185	(s)	<i>Claims against the</i>		
186		<i>Department of Public Safety:</i>		
187		(TO BE PAID FROM GENERAL REVENUE FUND)		
188	(1)	Beaver Family Care Associates ..	\$	97.60
189	(2)	Chesapeake and Potomac		
190		Telephone Company		
191		of West Virginia	\$	200.00
192	(3)	St. Francis Hospital	\$	227.20
193	(t)	<i>Claim against the</i>		
194		<i>Public Service Commission:</i>		
195		(TO BE PAID FROM SPECIAL REVENUE FUND)		
196	(1)	R. L. Banks & Associates, Inc. ...	\$	4,799.00
197	(u)	<i>Claims against the</i>		
198		<i>Board of Regents:</i>		
199		(TO BE PAID FROM GENERAL REVENUE FUND)		
200	(1)	Casto Technical Services, Inc. ...	\$	1,604.00
201	(2)	Bernard Dickter	\$	92.74
202	(3)	Cecil Watson	\$	1,205.55
203	(4)	Xerox Corporation	\$	3,553.04
204		(TO BE PAID FROM SPECIAL REVENUE FUND)		
205		from Acct. No. 8855		
206	(1)	Kirby Electric Company	\$	107,835.04
207	(2)	Mellon-Stuart Company	\$	638,346.33
208	(v)	<i>Claims against the</i>		
209		<i>State Board of Rehabilitation:</i>		
210		(TO BE PAID FROM FEDERAL FUNDS)		
211		from Acct. No. 7873		
212	(1)	C. Lee Dunnavant, Jr.	\$	2,180.00
213	(2)	Michael P. King	\$	2,616.50
214	(3)	Process-Strategies Institute	\$	899.00
215	(w)	<i>Claims against the</i>		
216		<i>Secretary of State:</i>		
217		(TO BE PAID FROM GENERAL REVENUE FUND)		

218	(1) Moore Business Forms, Inc. &		
219	Systems Division	\$	1,290.20
220	(2) Xerox Corporation	\$	578.49

221 (x) *Claims against the*
 222 *State Tax Department:*

223 (TO BE PAID FROM GENERAL REVENUE FUND)

224	(1) Bell Atlanticom Systems, Inc. ...	\$	1,022.94
225	(2) Joe L. Smith, Jr.,		
226	Inc./BJW Printers Div.	\$	6,880.00
227	(3) Pentree, Inc.	\$	182,100.00

228 (y) *Claim against the State Treasurer:*

229 (TO BE PAID FROM GENERAL REVENUE FUND)

230	(1) H. John Rogers	\$	2,937.00
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231 (z) *Claim against the*
 232 *Water Resources Board:*

233 (TO BE PAID FROM GENERAL REVENUE FUND)

234	(1) AT & T Communications, Inc. ...	\$	5.20
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235 (aa) *Claims against the*
 236 *Workers' Compensation Fund:*

237 (TO BE PAID FROM WORKERS' COMPENSATION FUND)

238	(1) Executone/Mountain State		
239	Communications, Inc.	\$	1,872.30
240	(2) Xerox Corporation	\$	837.00

241 The Legislature finds the following claim to be a
 242 moral obligation of the State of West Virginia for unjust
 243 arrest and imprisonment or conviction and im-
 244 prisonment.

245 (bb) *Claim against the*
 246 *State of West Virginia:*

247 (TO BE PAID FROM GENERAL REVENUE FUND)

248	(1) William C. Edens, Jr.	\$	20,000.00
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249 The Legislature finds that the above moral obligations
 250 and the appropriations made in satisfaction thereof shall
 251 be the full compensation for all claimants, and that prior

253 to the payments to any claimant provided for in this bill,
254 the court of claims shall receive a release from said
255 claimant releasing any and all claims for moral
256 obligations arising from the matters considered by the
257 Legislature in the finding of the moral obligations and
258 the making of the appropriations for said claimant. The
259 court of claims shall deliver all releases obtained from
260 claimants to the department against which the claim
261 was allowed: *Provided*, That the claim of the Board of
262 Education of the County of McDowell against the West
263 Virginia State Board of Education for \$2,305,816.60
264 shall be recertified by the clerk of the court of claims
265 to the Legislature next year.

CHAPTER 31

(H. B. 2408—By Delegates Seacrist and Stemple)

[Passed April 4, 1989; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.

1 The Legislature has duly considered the findings of
2 fact and recommendations for awards reported to it by
3 the court of claims in respect to the following named
4 claimants who were innocent victims of crime within
5 this state and entitled to compensation; and in respect
6 to each of such named claimants the Legislature adopts
7 those findings of fact as its own, hereby declares it to
8 be the moral obligation of the state to pay each such
9 claimant in the amount specified below, and directs the

10 auditor to issue warrants for the payment thereof out
 11 of any fund appropriated and available for the purpose.

12 *Claims for crime victims compensation awards:*

13 (TO BE PAID FROM CRIME VICTIMS COMPENSATION FUND)

14	(1) Browning, Peggy Lynn.....	\$ 15,000.00
15	(2) Carroll, Robert E., as guardian	
16	of Timothy E. Carroll.....	\$ 10,000.00
17	(3) Chapman, Karl Dean.....	\$ 2,500.00
18	(4) Chapman, Sylvia,	
19	administratrix of the estate	
20	of Hinton Richmond	\$ 5,000.00
21	(5) Duty, Steve A.	\$ 10,000.00
22	(6) Duty, Steve A., as guardian of	
23	Jared Duty.....	\$ 5,000.00
24	(7) Ellis, Tammy, as guardian of	
25	Tabithe Graham	\$ 10,000.00
26	(8) Gandy, Bonnie	\$ 10,000.00
27	(9) Gandy, John E.	\$ 2,500.00
28	(10) Gandy, Keith Edward	\$ 10,000.00
29	(11) Harris, Kenneth R., as guardian	
30	of Larry Ray Harris	\$ 5,000.00
31	(12) Harris, Kenneth R., as guardian of	
32	Timothy M. Harris	\$ 5,000.00
33	(13) Hemingway, Debra A.,	
34	as guardian of	
35	Shasta A. Hemingway	\$ 5,000.00
36	(14) Pennington, Tammy M.	\$ 5,000.00
37	(15) Robinson, Brian K.....	\$ 1,000.00
38	(16) Smith, Sandra, as guardian	
39	of Dawn Christine Smith	\$ 10,000.00
40	(17) Smith, Sandra, as guardian	
41	of Richard Wayne Smith.....	\$ 10,000.00
42	(18) Taylor, Marcella	\$ 5,000.00
43	(19) Taylor, Marcella,	
44	as guardian of	
45	Eleesha K. Taylor	\$ 5,000.00
46	(20) Taylor, Marcella, as guardian	
47	of Ellis Taylor, III.....	\$ 5,000.00
48	(21) Thompson, Gregg	\$ 10,000.00
49	(22) Woods, Donald.....	\$ 10,000.00

50	(23) Wright, Guadalupe, as guardian	
51	of April Ann Adkins.....	\$ 5,000.00
52	(24) Wright, Guadalupe, as guardian	
53	of Harley Joe Adkins	\$ 5,000.00
54	TOTAL.....	\$166,000.00
55	The Legislature finds that the above moral obligations	
56	and the appropriations made in satisfaction thereof shall	
57	be the full compensation for all claimants herein.	

CHAPTER 32

(H. B. 2426—By Delegates Seacrist and Helmick)

[Passed April 4, 1989; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring a certain claim against the state and its agency to be a moral obligation of the state and directing the auditor to issue a warrant for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIM AGAINST THE STATE.

§1. Finding and declaring a certain claim against the department of education to be a moral obligation of the state and directing payment thereof.

1 The Legislature has heretofore made findings of fact
2 that the state has received the benefit of the services
3 rendered by a certain claimant herein and has consid-
4 ered this claim against the state agency thereof, which
5 has arisen due to an over-expenditure of the departmen-
6 tal appropriations by officers of such state spending
7 unit, such claim having been previously considered by
8 the court of claims which also found that the state has
9 received the benefit of the services rendered by the
10 claimant, but was denied by the court of claims on the
11 purely statutory grounds that to allow such claim would
12 be condoning illegal acts contrary to the laws of the
13 state. The Legislature pursuant to its findings of fact
14 and also by the adoption of the findings of fact by

15 court of claims as its own, and, while not condoning such
16 illegal acts, hereby declares it to be the moral obligation
17 of the state to pay this claim in the amount specified
18 below, and directs the auditor to issue a warrant upon
19 receipt of a properly executed requisition supported by
20 an itemized invoice, statement or other satisfactory
21 document as required by section ten, article three,
22 chapter twelve of the code of West Virginia, one
23 thousand nine hundred thirty-one, as amended, for the
24 payment thereof out of any fund appropriated and
25 available for the purpose.

26 *Claim against the Department of Education:*

27 (TO BE PAID FROM GENERAL REVENUE FUND)

28 Lester R. Lucas, Jr. \$ 4,911.47

CHAPTER 33

(Com. Sub. for S. B. 455—By Senator Tucker, Mr. President, By Request)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying the term claimant when granting awards to minors; compensating West Virginia citizens who are victimized in states without compensation programs.

Be it enacted by the Legislature of West Virginia:

That section three, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-3. Definitions.

1 As used in this article, the term:

2 (a) "Claimant" means any of the following persons,
3 whether residents or nonresidents of this state, who

4 claim an award of compensation under this article:

5 (1) A victim: *Provided*, That the term victim does not
6 include a nonresident of this state where the criminally
7 injurious act did not occur in this state;

8 (2) A dependent, spouse or minor child of a deceased
9 victim; or in the event that the deceased victim is a
10 minor, the parents, legal guardians and siblings of the
11 victim;

12 (3) A third person other than a collateral source who
13 legally assumes or voluntarily pays the obligations of a
14 victim, or of a dependent of a victim, which obligations
15 are incurred as a result of the criminally injurious
16 conduct that is the subject of the claim;

17 (4) A person who is authorized to act on behalf of a
18 victim, dependent or a third person who is not a
19 collateral source; and, in the event that the victim,
20 dependent or third person who is not a collateral source
21 is a minor or other legally incompetent person, the duly
22 qualified fiduciary of such minor.

23 (b) "Collateral source" means a source of benefits or
24 advantages for economic loss otherwise compensable
25 that the victim or claimant has received, or that is
26 readily available to him, from any of the following
27 sources:

28 (1) The offender, except any restitution received from
29 the offender pursuant to an order by a court of law
30 sentencing the offender or placing him on probation
31 following a conviction in a criminal case arising from
32 the criminally injurious act for which a claim for
33 compensation is made;

34 (2) The government of the United States or any of its
35 agencies, a state or any of its political subdivisions, or
36 an instrumentality of two or more states;

37 (3) Social security, medicare and medicaid;

38 (4) State-required, temporary, nonoccupational dis-
39 ability insurance; other disability insurance;

40 (5) Workers' compensation;

41 (6) Wage continuation programs of any employer;

42 (7) Proceeds of a contract of insurance payable to the
43 victim or claimant for loss that was sustained because
44 of the criminally injurious conduct;

45 (8) A contract providing prepaid hospital and other
46 health care services or benefits for disability;

47 (9) That portion of the proceeds of all contracts of
48 insurance payable to the claimant on account of the
49 death of the victim which exceeds twenty-five thousand
50 dollars.

51 (c) "Criminally injurious conduct" means conduct that
52 occurs or is attempted in this state or in any state not
53 having a victim compensation program which by its
54 nature poses a substantial threat of personal injury or
55 death, and is punishable by fine or imprisonment or
56 death, or would be so punishable but for the fact that
57 the person engaging in the conduct lacked capacity to
58 commit the crime under the laws of this state.
59 Criminally injurious conduct does not include conduct
60 arising out of the ownership, maintenance or use of a
61 motor vehicle, except when the person engaging in the
62 conduct intended to cause personal injury or death, or
63 except when the person engaging in the conduct
64 committed negligent homicide, driving under the
65 influence of alcohol, controlled substances or drugs, or
66 reckless driving.

67 (d) "Dependent" means an individual who received
68 over half of his support from the victim. For the purpose
69 of determining whether an individual received over half
70 of his support from the victim, there shall be taken into
71 account the amount of support received from the victim
72 as compared to the entire amount of support which the
73 individual received from all sources, including support
74 which the individual himself supplied. The term
75 "support" includes, but is not limited to, food, shelter,
76 clothing, medical and dental care and education. The
77 term "dependent" includes a child of the victim born
78 after his death.

79 (e) "Economic loss" means economic detriment con-

80 sisting only of allowable expense, work loss and
81 replacement services loss. If criminally injurious
82 conduct causes death, economic loss includes a depend-
83 ent's economic loss and a dependent's replacement
84 services loss. Noneconomic detriment is not economic
85 loss; however, economic loss may be caused by pain and
86 suffering or physical impairment.

87 (f) "Allowable expense" means reasonable charges
88 incurred or to be incurred for reasonably needed
89 products, services and accommodations, including those
90 for medical care, prosthetic devices, eye glasses,
91 dentures, rehabilitation and other remedial treatment
92 and care.

93 Allowable expense includes a total charge not in
94 excess of three thousand dollars for expenses in any way
95 related to funeral, cremation and burial. It does not
96 include that portion of a charge for a room in a hospital,
97 clinic, convalescent home, nursing home or any other
98 institution engaged in providing nursing care and
99 related services in excess of a reasonable and customary
100 charge for semiprivate accommodations, unless accom-
101 modations other than semiprivate accommodations are
102 medically required.

103 (g) "Work loss" means loss of income from work that
104 the injured person would have performed if he had not
105 been injured and expenses reasonably incurred or to be
106 incurred by him to obtain services in lieu of those he
107 would have performed for income, reduced by any
108 income from substitute work actually performed or to
109 be performed by him, or by income he would have
110 earned in available appropriate substitute work that he
111 was capable of performing but unreasonably failed to
112 undertake.

113 (h) "Replacement services loss" means expenses
114 reasonably incurred or to be incurred in obtaining
115 ordinary and necessary services in lieu of those the
116 injured person would have performed, not for income
117 but for the benefit of himself or his family, if he had
118 not been injured.

119 (i) "Dependent's economic loss" means loss after a

120 victim's death of contributions or things of economic
121 value to his dependents, not including services they
122 would have received from the victim if he had not
123 suffered the fatal injury, less expenses of the dependents
124 avoided by reason of the victim's death.

125 (j) "Dependent's replacement service loss" means loss
126 reasonably incurred or to be incurred by dependents
127 after a victim's death in obtaining ordinary and
128 necessary services in lieu of those the victim would have
129 performed for their benefit if he had not suffered the
130 fatal injury, less expenses of the dependents avoided by
131 reason of the victim's death and not subtracted in
132 calculating dependent's economic loss.

133 (k) "Noneconomic detriment" means sorrow, mental
134 anguish, and solace which may include society, compan-
135 ionship, comfort, guidance, kindly offices and advice.

136 (l) "Victim" means a person who suffers personal
137 injury or death as a result of any one of the following:
138 (1) Criminally injurious conduct; (2) the good faith effort
139 of the person to prevent criminally injurious conduct; or
140 (3) the good faith effort of the person to apprehend a
141 person that the injured person has observed engaging
142 in criminally injurious conduct, or who such injured
143 person has reasonable cause to believe has engaged in
144 such criminally injurious conduct immediately prior to
145 the attempted apprehension.

146 (m) "Contributory misconduct" means any conduct of
147 the claimant, or of the victim through whom the
148 claimant claims an award, that is unlawful or intention-
149 ally tortious and that, without regard to the conduct's
150 proximity in time or space to the criminally injurious
151 conduct has causal relationship to the criminally
152 injurious conduct that is the basis of the claim and shall
153 also include the voluntary intoxication of the claimant,
154 either by the consumption of alcohol or the use of any
155 controlled substance when such intoxication has a causal
156 connection or relationship to the injury sustained. The
157 voluntary intoxication of a victim shall not be a defense
158 against the estate of a deceased victim.

CHAPTER 34

(Com. Sub. for H. B. 2858—By Delegate Love)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to office of community and industrial development; low-interest loans to private companies processing West Virginia mined coal to coke; changing requirement for using West Virginia coal to not less than seventy-five percent.

Be it enacted by the Legislature of West Virginia:

That section seven, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. OFFICE OF COMMUNITY AND INDUSTRIAL DEVELOPMENT.

§5B-2-7. Authority of director to provide low-interest loans to private companies entering into the process of converting West Virginia coal to coke; funding.

1 Effective the first day of July, one thousand nine
2 hundred eighty-seven, the director, with the approval of
3 the governor, is hereby empowered to provide reduced
4 rate loans to private companies for the building of coal
5 processing facilities for the making of coke for steel
6 production. Funds for such loans shall be provided from
7 moneys borrowed from any fund administered by the
8 state. The loans will be repaid through the governor's
9 office of community and industrial development to the
10 fund from which they were borrowed. The rate of
11 interest charged shall be two percent below the current
12 prime lending rate for funds available from private
13 sources in projects of a similar nature. The state shall
14 fund no more than eighty percent of the total cost of the
15 project. The private company sponsoring the project
16 must provide the other twenty percent of the project's
17 funds from its own capital or from moneys borrowed

18 from nonpublic sources. The moneys borrowed are to be
19 used for the construction of coal coking facilities and
20 related buildings and other structures: *Provided*, That
21 not less than seventy-five percent of coal processed at
22 this facility during the time when loan moneys are being
23 utilized must be coal mined exclusively in West
24 Virginia. For the five years following the repayment of
25 the loan, not less than seventy-five percent of coal
26 processed at this facility must also be coal mined
27 exclusively in West Virginia, provided there is sufficient
28 quantity of coal mined exclusively in West Virginia
29 meeting environmental regulatory standards. A private
30 company applying to the governor's office of community
31 and industrial development for a loan pursuant to this
32 section shall certify on its loan application that the
33 reduced rate loan will be used exclusively for construct-
34 ing coal coking facilities and that those facilities will be
35 used for the process of converting West Virginia coal to
36 coke.

37 The director is authorized to promulgate rules and
38 regulations consistent with the provisions of this section
39 to aid in administration of the provisions of this section:
40 *Provided*, That the rules and regulations promulgated
41 by the director shall contain equal requirements for the
42 provision of low interest loans, for in-state and out-of-
43 state private companies.

CHAPTER 35

(H. B. 2824—By Delegates Farmer and Johnson)

[Passed April 4, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six-a, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to consumer protection—new motor vehicle warranties; dealer's written disclosure of repairs to consumers.

Be it enacted by the Legislature of West Virginia:

That article six-a, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-a, to read as follows:

ARTICLE 6A. CONSUMER PROTECTION—NEW MOTOR VEHICLE WARRANTIES.

§46A-6A-3a. Dealer's duty to disclose repairs to consumer.

1 Beginning the first day of July, one thousand nine
2 hundred eighty-nine, all authorized dealers of new
3 motor vehicles purchased in this state shall provide to
4 any consumer a written disclosure of any repairs to a
5 new motor vehicle which repairs have a retail value of
6 five hundred dollars or more and were performed after
7 shipment from the manufacturer to the dealer, includ-
8 ing damage to the new motor vehicle while in transit.

9 This disclosure requirement does not apply to identi-
10 cal replacement of stolen or damaged accessories or
11 their components, tires or antennae.

12 For purposes of this section, a motor vehicle is not a
13 new motor vehicle when it has been previously titled or
14 the motor vehicle has been damaged in such a manner
15 that, were the damage not repaired, the value and
16 usability of the motor vehicle would be substantially
17 impaired.

CHAPTER 36

(Com. Sub. for H. B. 2138—By Mr. Speaker, Mr. Chambers, and Delegate Rollins)

[Passed April 5, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fifty-three and fifty-four, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to corporations generally; abolishing the requirement that foreign corporations have to submit certified copies of their articles of incorporation and amendments as part of their application for a

certificate of authority; and abolishing the requirement that foreign corporations record copies of their articles of incorporation and amendments in county clerks' offices.

Be it enacted by the Legislature of West Virginia:

That sections fifty-three and fifty-four, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

§31-1-53. Application for certificate of authority by foreign corporation; contents; churches or religious denominations in corporate capacity prohibited.

§31-1-54. Application for certificate of authority; filing; issuance of certificate; recordation; penalty for failure to record.

§31-1-53. Application for certificate of authority by foreign corporation; contents; churches or religious denominations in corporate capacity prohibited.

1 (a) A foreign corporation, in order to procure a
2 certificate of authority to conduct affairs, or do or
3 transact business in this state, shall make application
4 therefor to the secretary of state, which application shall
5 set forth:

6 (1) The name of the corporation and the state or
7 country under the laws of which it is incorporated.

8 (2) If the name of the corporation does not contain the
9 word "corporation," "company," "incorporated" or
10 "limited," or does not contain an abbreviation of one of
11 such words, then the name of the corporation with the
12 word or abbreviation which it elects to add thereto for
13 use in this state.

14 (3) The date of incorporation and the period of
15 duration of the corporation.

16 (4) The address of the principal office of the corpora-
17 tion.

18 (5) The name and address of the person to whom shall
19 be sent notice or process served upon, or service of which

20 is accepted by, the secretary of state, if one has been
21 designated.

22 (6) The purpose or purposes of the corporation which
23 it proposes to pursue in conducting its affairs or doing
24 or transacting its business in this state.

25 (7) The names and respective addresses of the direc-
26 tors and officers of the corporation.

27 (8) Such additional information as may be necessary
28 or appropriate in order to enable the secretary of state
29 to determine whether such corporation is entitled to a
30 certificate of authority to conduct its affairs or do or
31 transact business in this state and to determine and
32 assess the fees payable as prescribed by law.

33 (9) The county wherein the corporation intends to
34 record its certificate of authority.

35 (b) In the case of a business corporation, in addition
36 to those matters required to be set forth under the
37 provisions of subsection (a) of this section, such appli-
38 cation shall set forth:

39 (1) A statement of the aggregate number of shares
40 which the corporation has authority to issue, itemized
41 by classes, par value of shares, shares without par value,
42 and series, if any, within a class.

43 (2) A statement of the aggregate number of issued
44 shares itemized by classes, par value of shares, shares
45 without par value, and series, if any, within a class.

46 (3) A statement, expressed in dollars, of the amount
47 of stated capital of the corporation, as defined in this
48 article.

49 (4) An estimate, expressed in dollars, of the value of
50 all property to be owned by the corporation, for the
51 following year, wherever located, and an estimate of the
52 value of the property of the corporation to be located
53 within this state during such year, and an estimate,
54 expressed in dollars, of the gross amount of business
55 which will be done or transacted by the corporation
56 during such year, and an estimate of the gross amount
57 thereof which will be done or transacted by the

58 corporation at or from places of business in this state
59 during such year.

60 (c) Such application shall be made on forms pres-
61 cribed and furnished by the secretary of state and shall
62 be executed in duplicate by the corporation by its
63 president or vice president and by its secretary or an
64 assistant secretary, and verified by one of the officers
65 signing such application.

66 (d) No church, religious sect or denomination incor-
67 porated by the laws of any other state or territory of the
68 United States, the District of Columbia or of any foreign
69 country shall be qualified to conduct affairs or do or
70 transact business in this state in a corporate capacity.

**§31-1-54. Application for certificate of authority; filing;
issuance of certificate; recordation; penalty
for failure to record.**

1 (a) Duplicate originals of the application of a foreign
2 corporation for a certificate of authority shall be
3 delivered to the secretary of state together with a
4 statement or certificate from the proper officer of the
5 state or country under the laws of which it is incorpo-
6 rated that the corporation is in good standing with the
7 state or country under the laws of which it is
8 incorporated.

9 If the secretary of state finds that such application
10 conforms to law, he shall, when all fees have been paid
11 as prescribed by law, (i) endorse on each of such
12 originals the word "Filed," and the month, day and year
13 of the filing thereof; (ii) file one of such duplicate
14 originals of the application and (iii) issue a certificate
15 of authority to conduct affairs or to do or transact
16 business in this state, to which he shall affix the other
17 duplicate original application.

18 (b) The certificate of authority, together with the
19 duplicate original of the application affixed thereto by
20 the secretary of state, shall be returned to the corpora-
21 tion or its representative.

22 (c) The certificate of authority, shall be recorded in
23 the office of the county commission of the county where

24 the principal office of the corporation in this state is
25 located. If such corporation does not maintain a
26 principal office in this state, such recordation may be
27 completed in any county in which it is conducting its
28 affairs or doing or transacting business. A failure to
29 comply with the provisions of this subsection within six
30 months from the date of issuance of a certificate of
31 authority shall subject such corporation to a fine of not
32 more than one thousand dollars.

CHAPTER 37

(H. B. 2258—By Delegates Warner and Jones)

[Passed April 5, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventy-three, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to actions by shareholders, members or directors of a corporation without a meeting; allowing same to conference by telephone or other electronic equipment; allowing action by electronic conference when action is later reduced to writing; and the manner of approval of such action.

Be it enacted by the Legislature of West Virginia:

That section seventy-three, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

§31-1-73. Action by shareholders, members or directors without a meeting.

1 (a) Whenever the vote of shareholders or members at
2 a meeting thereof is required or permitted to be taken
3 in connection with any corporate action, the meeting and
4 vote of the shareholders or members may be dispensed
5 with if all of the shareholders or members who would
6 have been entitled to vote upon the action agree in
7 writing to the corporate action being taken. The

8 agreement shall have like effect and validity as though
9 the action were duly taken by the unanimous action of
10 all shareholders or members entitled to vote at a
11 meeting of the shareholders or members duly called and
12 legally held.

13 (b) Unless otherwise provided in the articles of
14 incorporation or the bylaws, whenever the vote of
15 directors at a meeting thereof is required or permitted
16 to be taken in connection with any corporate action, the
17 meeting and vote of the directors may be dispensed with
18 if all the directors agree in writing to the corporate
19 action being taken. The agreement shall have like effect
20 and validity as though the action were duly taken by the
21 unanimous action of all directors at a meeting of the
22 directors duly called and legally held.

23 (c) If the articles of incorporation or the bylaws so
24 provide, one or more directors or shareholders may
25 participate in a meeting of the board, a committee of
26 the board or of the shareholders by means of conference
27 telephone or similar electronic communications equip-
28 ment by means of which all persons participating in the
29 meeting can hear each other.

30 Whenever a vote of the shareholders or directors is
31 required or permitted in connection with any corporate
32 action this vote may be taken orally during this
33 electronic conference. The agreement thus reached shall
34 have like effect and validity as though the action were
35 duly taken by the action of the shareholders or directors
36 at a meeting of shareholders or directors if the agree-
37 ment is reduced to writing and approved by the
38 shareholders or directors at the next regular meeting of
39 the shareholders or directors after the conference.

40 (d) In the event that the action which is agreed to, as
41 provided for in subsection (a), (b) or (c) of this section,
42 is an action which would have required the filing of any
43 articles, documents or certificates with the secretary of
44 state under any provision of this article if the action had
45 been voted upon by the shareholders or members or by
46 the directors at a meeting, the articles, documents or
47 certificates so filed shall state that a written agreement

48 has been executed in lieu of stating that the share-
49 holders, members or directors voted upon the corporate
50 action in question. The articles, documents or certifi-
51 cates shall have the same force and effect under all
52 provisions of law as if the action had been taken by the
53 unanimous vote of all shareholders or members entitled
54 to vote, or of all the directors, at a meeting duly called
55 and legally held.

CHAPTER 38

(S. B. 439—By Senators Tucker, Mr. President, and Jackson)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, six, twenty-a, twenty-one and twenty-four, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article eighteen by adding thereto two new sections, designated sections twenty-six and twenty-seven, all relating to the West Virginia housing development fund; providing additional legislative findings; adding, amending and clarifying certain definitions; expanding and clarifying the powers of the fund; providing additional purposes for the fund; authorizing fund to finance or otherwise participate in certain nonresidential projects under certain conditions; adding certain provisions relating to conflict of interest involving officers or directors of the fund; prohibiting certain transactions involving such officers and directors except in certain circumstances; permitting annual audits to be performed by a nonresident as well as resident independent certified public accountant; declaring that projects shall not be deemed public improvements; and providing for confidentiality of documentary materials and other data received or made by fund.

Be it enacted by the Legislature of West Virginia:

That sections two, three, six, twenty-a, twenty-one and

twenty-four, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article eighteen be further amended by adding thereto two new sections, designated sections twenty-six and twenty-seven, all to read as follows:

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-2. Legislative findings and purpose.

§31-18-3. Definitions.

§31-18-6. Corporate powers.

§31-18-20a. Land development fund.

§31-18-21. Prohibition on funds inuring to the benefit of or being distributable to directors, officers or private persons; transactions between the housing development fund and directors or officers having certain interests in such transactions.

§31-18-24. Annual audit; reports to joint committee on government and finance; information to joint committee or legislative auditor.

§31-18-26. Projects not to be deemed public improvements.

§31-18-27. Documentary materials concerning trade secrets; commercial, financial or personal information; confidentiality.

§31-18-2. Legislative findings and purpose.

1 (a) The Legislature hereby finds and declares that as
2 a result of public actions involving highways, public
3 facilities, flood-control projects and urban renewal
4 activities, and as a result of the spread of slum
5 conditions and blight to formerly sound urban and rural
6 neighborhoods, there exists in the state of West Virginia
7 a serious shortage of sanitary, decent and safe residen-
8 tial housing available at low prices or rentals to persons
9 and families of low and moderate income. This shortage
10 is severe in certain urban areas of the state, is especially
11 critical in the rural areas of West Virginia, and is
12 inimical to the health, welfare and prosperity of all
13 residents of the state and to the sound growth of West
14 Virginia communities.

15 (b) The Legislature hereby finds and declares further
16 that private enterprise and investment have not been
17 able to produce, without assistance, the needed construc-
18 tion of sanitary, decent and safe residential housing at
19 low prices or rentals which persons and families of low
20 and moderate income can afford, to provide sufficient
21 long-term mortgage financing for residential housing

22 for occupancy by persons and families of low and
23 moderate income or to achieve the urgently needed
24 rehabilitation of much of the present low and moderate
25 income housing stock. It is imperative that the supply
26 of residential housing for persons and families displaced
27 by public actions or natural disaster be increased; that
28 private enterprise and investment be encouraged both
29 to sponsor land development for residential housing for
30 such persons and families and to sponsor, build and
31 rehabilitate residential housing for such persons and
32 families; and that private financing be supplemented by
33 financing as in this article provided, to help prevent the
34 recurrence of slum conditions and blight and assist in
35 their permanent elimination throughout West Virginia.

36 (c) The Legislature hereby finds and declares further
37 that experience has demonstrated that concentration in
38 residential housing developments, or residential housing
39 areas, of only persons and families who, without some
40 form of private or public assistance, do not have incomes
41 sufficient to afford sanitary, decent and safe residential
42 housing, frequently does not eliminate, or avoid,
43 undesirable social conditions and frequently does not
44 permanently eliminate, or avoid, slum conditions, and
45 that in such instances occupancy of some of the
46 residential housing units in such residential housing
47 developments, or residential housing areas, by persons
48 and families of higher income is desirable and beneficial
49 in achieving the stated public purposes for enacting this
50 legislation.

51 (d) The Legislature hereby finds and declares further
52 that depressed economic conditions in this state and a
53 related lack of employment and business opportunities
54 caused thousands of people to leave this state to find
55 employment elsewhere; that such depressed economic
56 conditions and related exodus of population adversely
57 affected the property tax base of this state, adversely
58 affected the excise tax base of this state, diminished the
59 manpower resources of this state necessary for modern
60 mining, industrial and commercial operations and
61 development in this state, caused the population of this
62 state to include a disproportionately high number of

63 elderly, disabled and economically disadvantaged
64 persons, resulted in the spread of slum conditions and
65 blight to formerly sound urban and rural neighbor-
66 hoods, retarded, and continue to retard, the repair and
67 improvement of existing residential housing and the
68 construction of new residential housing, adversely
69 affected, and continue to adversely affect, land develop-
70 ment, including the extension and construction of water
71 systems, nonpolluting sewer systems, other utility
72 facilities and off-highway streets and roads essential to
73 new industrial, commercial and residential housing
74 development, critically restricted, and continue to
75 critically restrict, the construction of public housing for
76 occupancy by persons and families at the lowest level of
77 the low and moderate income segment of the population
78 of this state, critically restricted, and continue to
79 critically restrict, the opportunities of persons and
80 families at all levels of the low and moderate income
81 segment of the population of this state for improved
82 residential housing, either newly constructed or which
83 would normally become available to them when vacated
84 by persons and families of higher income occupying
85 newly constructed residential housing, and critically
86 restricted, and continue to critically restrict, the
87 construction of new residential housing, including, but
88 not limited to, nursing homes and intermediate care
89 facilities, of design and location suitable for occupancy
90 by disabled and by elderly persons; that as a result of
91 public actions involving highways, public facilities,
92 flood-control projects and urban-renewal activities
93 undertaken as a part of the programs of this state to
94 improve economic conditions and increase employment
95 opportunities in this state with a view to improving the
96 health, welfare and prosperity of residents of this state
97 and reversing the outward movement of population in
98 this state, extensive areas which are suitable for
99 industrial, commercial and residential housing uses
100 have been, or in the near future will be, opened up for
101 development for such purposes but in many instances
102 will be without the land development, including water
103 and nonpolluting sewer systems, other utility facilities
104 and off-highway street and road improvements essential

105 to use of the same for such purposes; that as a result
106 of the unique physical, economic, demographic and
107 other characteristics of this state, including its rugged
108 mountainous terrain, scarcity of land at low or moderate
109 cost suitable for residential housing, low population
110 density and cultural preferences which are not suited
111 for the denser, larger-scale housing projects typical of
112 more urban areas and high costs of land development
113 and housing construction, the difficulties of providing
114 land development, including water and nonpolluting
115 sewer systems, other utility facilities and off-highway
116 streets and roads, and of providing residential housing,
117 are unusually severe within this state and have res-
118 tricted and continue to restrict, land development and
119 housing construction needed for the people of the state;
120 that as a direct consequence of the foregoing there exists
121 in this state a serious shortage of sanitary, decent and
122 safe residential housing available for occupancy by
123 persons and families of all but the highest income levels
124 and there exists in this state a serious shortage of water
125 and nonpolluting sewer systems, other utility facilities
126 and off-highway street and road developments essential
127 to utilization of land for industrial, commercial and
128 residential housing purposes which, due to public
129 actions involving highways, public facilities, flood-
130 control projects and urban-renewal activities, is, or will
131 soon become, available for needed industrial, commer-
132 cial and residential housing purposes; that these
133 shortages are severe in certain urban areas of this state,
134 are especially critical in rural areas of this state and are
135 inimical to the present and future health, welfare and
136 prosperity of all residents of this state and to the sound
137 growth and development of communities in this state;
138 and that unless promptly remedied these shortages will
139 continue to seriously retard the sound economic growth
140 and development of this state, the related property tax
141 and excise tax bases of this state and the availability in
142 this state of manpower resources essential to modern
143 mining, industrial and commercial operations and
144 development which are essential to the health, welfare
145 and prosperity of this state and its residents.

146 (e) The Legislature hereby finds and declares further

147 that private enterprise and investment have not been
148 able to produce, or provide mortgage financing for,
149 sufficient new sanitary, decent and safe residential
150 housing at prices or rentals low enough to enable
151 sufficient persons and families having incomes at or
152 immediately above the higher level of the low and
153 moderate income segment of the population of this state
154 to occupy the same and thereby provide opportunities
155 for persons and families of lesser income to occupy
156 existing sanitary, decent and safe residential housing
157 thereby vacated, have not been able to produce, or
158 provide mortgage financing for, sufficient new residen-
159 tial housing essential to retain and attract qualified
160 manpower resources in and to many areas of this state
161 where such resources are, or shortly will be, critically
162 needed for existing, expanding and new mining,
163 industrial and commercial operations and development,
164 have not been able to produce, or provide mortgage
165 financing for, sufficient new residential housing,
166 including, but not limited to, nursing homes and
167 intermediate care facilities, of design and location
168 suitable for occupancy by elderly and by disabled
169 persons, have not been able to finance sufficient land
170 development, including extensions or construction of
171 water and nonpolluting sewer systems, other utility
172 facilities and off-highway streets and roads, essential to
173 utilization of undeveloped areas of this state for
174 industrial, commercial and residential housing pur-
175 poses, and have not been able to achieve urgently needed
176 rehabilitation of much of the present housing stock of
177 this state; that it is imperative that the supply of
178 residential housing necessary to retain and attract
179 qualified manpower resources in and to many areas of
180 this state where such resources are, or shortly will be,
181 critically needed for existing, expanding and new
182 mining, industrial and commercial operations and
183 developments be provided, that sufficient new residen-
184 tial housing, including, without limitation, nursing
185 homes and intermediate care facilities, designed and
186 located so as to be suitable for occupancy by elderly
187 persons and by disabled persons be provided, that
188 needed public housing for occupancy by persons and

189 families at the lowest level of the low and moderate
190 income segment of the population of this state be
191 provided, that land development, including water and
192 nonpolluting sewer systems and other utilities and off-
193 highway streets and roads in this state necessary or
194 desirable for new commercial, industrial and residential
195 housing uses be provided, and that the existing political
196 subdivisions of this state, and private enterprise and
197 investment resources in this state, be encouraged to
198 sponsor and finance land development, including water
199 and nonpolluting sewer systems, other utilities and off-
200 highway streets and roads, and to finance, construct and
201 rehabilitate such residential housing; and that it is
202 necessary that such efforts be supplemented by this
203 state as in this article provided.

204 (f) The Legislature hereby finds and declares further
205 that political subdivisions in West Virginia which are
206 presently authorized and empowered by law to acquire,
207 construct, operate and manage public housing projects
208 have not been able to acquire and construct, even with
209 available federal and state assistance, public housing
210 projects sufficient to fulfill the needs for sanitary, decent
211 and safe residential housing for occupancy by persons
212 and families at the lowest level of the low and moderate
213 income segment of the population of this state who have
214 been entitled to occupy public housing in many smaller
215 municipalities in West Virginia and especially in the
216 rural areas of West Virginia; that the primary cause of
217 such shortage of needed public housing projects is the
218 inability of such political subdivisions to remedy such
219 shortages because the number of units of public housing
220 needed within its territorial jurisdiction is not sufficient
221 to generate, and justify the expenditure of, adequate
222 funds to provide the requisite arranging of financing
223 for, and planning, development, acquisition, construc-
224 tion, operation and management of such public housing;
225 and that the acquisition, construction, planning, devel-
226 opment, financing and management of public housing
227 projects in this state by a governmental instrumentality
228 and public body corporate with statewide jurisdiction as
229 authorized herein will permit or facilitate the arranging
230 of financing for, and planning, development, acquisition,

231 construction, operation or management of public
232 housing units, even though such units are included in
233 several projects each of which contains a relatively small
234 number of such units, sufficient in the aggregate to
235 generate, and justify the expenditure of, sufficient funds
236 to provide the requisite arranging of financing for, and
237 planning, development, acquisition, construction, opera-
238 tion and management of such public housing, thereby
239 providing the means to alleviate the existing shortages
240 of public housing in many municipalities in West
241 Virginia and in the rural areas of West Virginia.

242 (g) The Legislature hereby finds and declares further
243 that its intention by enacting this legislation is to
244 provide for the continuation of the West Virginia
245 housing development fund, the corporate purpose of
246 which is to provide financing for development costs and
247 land development to public and private sponsors of land
248 development in this state; further to provide federally
249 insured construction loans to public and private spon-
250 sors of land development or to public and private
251 sponsors of residential housing for occupancy by eligible
252 persons and families; further to provide uninsured
253 construction loans to public and private sponsors of land
254 development or to public and private sponsors of
255 residential housing for occupancy by eligible persons
256 and families or to eligible persons and families who may
257 construct such housing; further to provide long term
258 federally insured mortgage loans to public and private
259 sponsors of residential housing for occupancy by eligible
260 persons and families and to eligible persons and families
261 who may purchase or construct such housing; further to
262 provide long-term uninsured mortgage loans to public
263 and private sponsors of residential housing for occu-
264 pancy by eligible persons and families and to eligible
265 persons and families who may purchase or construct
266 such housing; further to provide technical, consultative
267 and project assistance service to public and private
268 sponsors of such land development or residential
269 housing; further to increase the construction of residen-
270 tial housing for occupancy by eligible persons and
271 families through participating in the making of, or the
272 making of, loans to mortgagees approved by the housing

273 development fund, and taking as collateral security
274 therefor, or purchasing, or investing in long-term
275 federal mortgages or federally insured mortgages, or
276 uninsured mortgages, on residential housing constructed in this state, thereby increasing the supply of
277 funds for long-term mortgage financing of residential
278 housing for occupancy by eligible persons and families
279 and freeing funds for use in short-term construction
280 financing of residential housing for occupancy by
281 eligible persons and families; further to plan, develop,
282 finance, acquire, construct, mortgage or otherwise
283 encumber, operate, manage, sell, lease or otherwise
284 dispose of public housing projects; and finally to assist
285 in coordinating federal, state, regional and local public
286 and private efforts and resources to otherwise increase
287 the supply of such residential housing.

289 (h) The Legislature hereby finds and declares further
290 that in accomplishing this purpose, the West Virginia
291 housing development fund, heretofore created and
292 established by this article, is acting in all respects for
293 the benefit of the people of the state of West Virginia
294 to serve a public purpose in improving and otherwise
295 promoting their health, welfare and prosperity, and that
296 the West Virginia housing development fund, heretofore
297 created and established, is empowered, hereby, to act on
298 behalf of the state of West Virginia and its people in
299 serving this public purpose for the benefit of the general
300 public.

301 (i) The Legislature hereby finds and declares further
302 that during a period of national growth this state has
303 experienced a lack of employment and business opportunities, which have caused a reduction in the tax base
304 of the state, diminishing the resources available to this
305 state to provide for the health, safety and welfare of its
306 citizens; that there has been and continues to be a need
307 for economic development and improvement and capital
308 investment in this state, including, but not limited to,
309 the real estate and construction industries, both residential and nonresidential; that there exists in this state a
310 shortage of the capital needed to finance general
311 economic development through investment in enter-
312
313

314 prises which have the potential to create new employ-
315 ment opportunities in this state and that there also
316 exists a shortage of construction and real estate
317 development financing, underwriting and construction
318 expertise, which shortage can be alleviated by utilizing
319 the expertise of the housing development fund and its
320 staff, which are hereby determined to be suited to
321 facilitate, implement and undertake the general eco-
322 nomic development and real estate construction and
323 development projects, both residential and nonresiden-
324 tial, which are necessary to support the capital base and
325 employment levels and remedy many of the underlying
326 causes of the current economic difficulties existing in
327 this state; that many other states have facilitated the
328 development of capital and the growth of employment
329 opportunities through state programs which provide
330 combined technical and financial assistance for business
331 and real estate development in such states; and the
332 Legislature hereby finds and declares further in support
333 of the foregoing that it shall be a corporate purpose of
334 the housing development fund to provide assistance by
335 loans, grants or otherwise for the costs, including
336 development and direct and indirect costs, and financ-
337 ing for public and private sponsors of land development,
338 residential housing and nonresidential projects in this
339 state, and further to provide construction loans and
340 mortgage loans (including privately insured and unin-
341 sured) to public and private sponsors of land develop-
342 ment and residential housing and nonresidential pro-
343 jects in this state, to make grants and provide technical,
344 consultative and project assistance services to public and
345 private sponsors of land development and residential
346 housing and nonresidential projects in this state, and to
347 plan, develop, finance, acquire, construct, renovate,
348 improve, mortgage or otherwise encumber, operate,
349 manage, sell, lease or otherwise dispose of general
350 economic development and land development projects
351 and residential projects and nonresidential projects in
352 this state.

353 (j) The Legislature hereby finds and declares further
354 that the housing development fund and its staff have
355 extensive expertise in real estate development financing,

356 underwriting and construction activities, and further
357 that there is a need on behalf of public and educational
358 bodies to facilitate the construction of new facilities or
359 renovation of existing facilities, which need can best be
360 met by making available to such public agencies and
361 bodies the real estate and construction development
362 services and consultative expertise of the housing
363 development fund at such cost and fees as the housing
364 development fund would normally impose, subject to the
365 provisions of this article relating to the powers of the
366 housing development fund.

§31-18-3. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

3 (1) "Annual sinking fund payment" means the amount
4 of money specified in the resolution or resolutions
5 authorizing term bonds as payable into a sinking fund
6 during a particular calendar year for the retirement of
7 term bonds at maturity after such calendar year, but
8 shall not include any amount payable by reason only of
9 the maturity of a bond.

10 (2) "Development costs" means the costs approved by
11 the housing development fund as appropriate expendi-
12 tures by the housing development fund or by sponsors,
13 for land development, residential housing, or nonresi-
14 dential projects within this state, including, but not
15 limited to:

16 (a) Payments for options to purchase proposed sites,
17 necessary easements and other related property rights,
18 deposits on contracts of purchase, or, with prior
19 approval of the housing development fund, payments for
20 the purchase of such properties;

21 (b) Legal and organizational expenses, including
22 payments of attorneys' fees, utility and governmental
23 application and filing fees and expenses, project
24 manager and clerical staff salaries, office rent and other
25 incidental expenses;

26 (c) Payment of fees and expenses for preliminary
27 feasibility studies and costs estimates and advances for
28 planning, engineering and architectural work;

29 (d) Expenses for tenant surveys and market analyses;
30 and

31 (e) Necessary application, approval and other fees.

32 (3) "Eligible persons and families" means:

33 (a) Persons and families of low and moderate income;
34 or

35 (b) Persons or families of higher income to the extent
36 the housing development fund shall find and determine,
37 by resolution, that construction of new or rehabilitated
38 residential housing for occupancy by them will cause to
39 be vacated existing sanitary, decent and safe residential
40 housing available at prices or rentals which persons and
41 families of low and moderate income can afford; or

42 (c) Persons or families of higher income to the extent
43 the housing development fund shall find and determine,
44 by resolution, that construction of new or rehabilitated
45 multi-family rental housing or new, rehabilitated or
46 existing home ownership housing in the state for
47 occupancy by them will further economic growth,
48 increase the housing stock in the state by eliminating
49 substandard or deteriorating housing conditions, or
50 provide additional housing opportunities in the state; or

51 (d) Persons who because of age or physical disability
52 are found and determined by the housing development
53 fund, by resolution, to require residential housing of a
54 special location or design in order to provide them with
55 sanitary, decent and safe residential housing; or

56 (e) Persons and families for whom, as found and
57 determined by the housing development fund by
58 resolution, construction of new or rehabilitated residen-
59 tial housing in some designated area or areas of the state
60 is necessary for the purpose of retaining in, or attracting
61 to, such area or areas qualified manpower resources
62 essential to modern mining, industrial and commercial
63 operations and development in such area or areas.

64 (4) "Federally insured construction loan" means a
65 construction loan for land development, residential
66 housing or nonresidential projects, which are either

67 secured or guaranteed, in whole or in part, by a
68 federally insured mortgage or a federal mortgage, or
69 which are insured or guaranteed, in whole or in part,
70 by the United States or an instrumentality thereof, or
71 a commitment by the United States or an instrumentality
72 thereof to insure such loan;

73 (5) "Federally insured mortgage" means a mortgage
74 loan for land development, residential housing or
75 nonresidential projects with a commitment by the
76 United States or an instrumentality thereof to insure or
77 guarantee such a mortgage.

78 (6) "Federal mortgage" means a mortgage loan for
79 land development, residential housing or nonresidential
80 projects made by the United States or an instrumentality
81 thereof, or a commitment by the United States or an
82 instrumentality thereof to make such a mortgage loan.

83 (7) "Housing development fund" means the West
84 Virginia housing development fund heretofore created
85 and established by section four of this article.

86 (8) "Land development" means the process of acquiring
87 land for residential housing construction or nonresidential
88 projects or of making, installing or constructing
89 improvements, including waterlines and water
90 supply installations, sewer lines and sewage disposal
91 installations, steam, gas, telephone and telecommunications
92 and electric lines and installations, roads, railroad
93 spurs, docking and shipping facilities, streets, curbs,
94 gutters, sidewalks, drainage and flood control facilities,
95 whether on or off the site, which the housing development
96 fund deems necessary or desirable to prepare such
97 land for construction within this state.

98 (9) "Land development fund" means the land development
99 fund which may be created and established by the
100 housing development fund in accordance with section
101 twenty-a of this article.

102 (10) "Minimum bond insurance requirement" means,
103 as of any particular date of computation, an amount of
104 money equal to the greatest of the respective amounts,
105 for the then current or any future calendar year, of

106 annual debt service of the housing development fund on
107 all outstanding mortgage finance bonds, such annual
108 debt service for any calendar year being the amount of
109 money equal to the aggregate of (a) all interest payable
110 during such calendar year on such mortgage finance
111 bonds on said date of computation, plus (b) the principal
112 amount of such mortgage finance bonds outstanding
113 which matures during such calendar year, other than
114 mortgage finance bonds for which annual sinking fund
115 payments have been or are to be made in accordance
116 with the resolution authorizing such bonds, plus (c) the
117 amount of all annual sinking fund payments payable
118 during such calendar year with respect to any such
119 mortgage finance bonds, all calculated on the assump-
120 tion that bonds will after said date of computation cease
121 to be outstanding by reason, but only by reason, of the
122 payment of bonds when due, and the payment when due
123 and application in accordance with the resolution
124 authorizing such bonds of all such sinking fund pay-
125 ments payable at or after said date of computation.

126 (11) "Mortgage finance bonds" means bonds issued or
127 to be issued by the housing development fund and
128 secured by a pledge of amounts payable from the
129 mortgage finance bond insurance fund in the manner
130 and to the extent provided in section twenty-b of this
131 article.

132 (12) "Mortgage finance bond insurance fund" means
133 the special trust fund created and established in the
134 state treasury in accordance with section twenty-b of
135 this article.

136 (13) "Nonresidential project" means a project in the
137 state, whether or not directly related to the providing
138 of residential housing, determined by the housing
139 development fund as likely to foster and enhance
140 economic growth and development in the area of the
141 state in which such project is developed, for retail,
142 commercial, industrial, community improvement or
143 preservation or other proper purpose, including tourism
144 and recreational housing, land, air or water transpor-
145 tation facilities, facilities for vocational or other training
146 or to provide medical care and other special needs of

147 persons residing in the state, sports complexes and
148 cultural, artistic and other exhibition centers, industrial
149 or commercial projects and facilities, mail order,
150 wholesale and retail sales facilities and other real or
151 personal properties including facilities which are owned
152 or leased by this state, any county or municipality or
153 other public body within the state, and includes, without
154 limitation, the process of acquiring, holding, operating,
155 planning, financing, demolition, construction, renovation,
156 leasing or otherwise disposing of such project or
157 any part thereof or interest therein. Any such project
158 may include appurtenant machinery and equipment.

159 (14) "Operating loan fund" means the operating loan
160 fund which may be created and established by the
161 housing development fund in accordance with section
162 nineteen of this article.

163 (15) "Persons and families of low and moderate
164 income" means persons and families, irrespective of
165 race, creed, national origin or sex, determined by the
166 housing development fund to require such assistance as
167 is made available by this article on account of personal
168 or family income not sufficient to afford sanitary, decent
169 and safe housing, and to be eligible or potentially
170 eligible to occupy residential housing constructed and
171 financed, wholly or in part, with federally insured
172 construction loans, federally insured mortgages, federal
173 mortgages or with other public or private assistance, or
174 with uninsured construction loans, or uninsured mortgage
175 loans, and in making such determination the fund
176 shall take into account the following: (a) The amount of
177 the total income of such persons and families available
178 for housing needs, (b) the size of the family, (c) the cost
179 and condition of housing facilities available, (d) the
180 eligibility of such persons and families for federal
181 housing assistance of any type predicated upon low or
182 moderate income basis, and (e) the ability of such
183 persons and families to compete successfully in the
184 normal housing market and to pay the amounts at which
185 private enterprise is providing sanitary, decent and safe
186 housing: *Provided*, That to the extent found and
187 determined by the housing development fund, by

188 resolution, to be necessary or appropriate for the
189 purposes of eliminating undesirable social conditions
190 and permanently eliminating slum conditions, the
191 income limitation requirements of this article may be
192 waived as to any persons or families who are eligible to
193 occupy residential housing constructed in whole, or in
194 part, with federally insured construction loans, federally
195 insured mortgages or federal mortgages under housing
196 assistance or mortgage insurance programs of the
197 United States, or an instrumentality thereof, predicated
198 upon any low or moderate income basis.

199 (16) "Residential housing" means a specific work or
200 improvement within this state undertaken primarily to
201 provide dwelling accommodations, including the acqui-
202 sition, construction or rehabilitation of land, buildings
203 and improvements thereto, for residential housing for
204 occupancy by eligible persons and families, including,
205 but not limited to, facilities for temporary housing and
206 emergency housing, nursing homes and intermediate
207 care facilities, and such other nonhousing facilities as
208 may be incidental or appurtenant thereto.

209 (17) "Special bond insurance commitment fee" means
210 a fee in the amount of one per centum of the total
211 principal amount of each loan which is to be temporarily
212 or permanently financed from the proceeds of mortgage
213 finance bonds, other than a federally insured construc-
214 tion loan, a federally insured mortgage or a federal
215 mortgage, or an amount equal to an equivalent discount
216 on each loan purchased or invested in by the housing
217 development fund from the proceeds of mortgage
218 finance bonds, other than a federally insured construc-
219 tion loan, a federally insured mortgage or a federal
220 mortgage, and which may be payable from the proceeds
221 of such bonds or any other source available to the
222 housing development fund for such use: *Provided*, That
223 if the period of time between the first disbursement of
224 proceeds of such loan and the date upon which it is
225 specified that the first repayment of principal of such
226 a loan shall be payable exceeds twelve months, an
227 additional amount computed on the basis of one twelfth
228 of one per centum per month on the total principal

229 amount of such loan over the number of months of such
230 period of time in excess of twelve months shall be
231 included in such fee.

232 (18) "Special bond insurance premium" means (i) a
233 fee at the rate of one half of one percent per annum on
234 the outstanding principal balance which the housing
235 development fund shall charge the borrower of a
236 mortgage loan, or of a loan secured by a mortgage,
237 financed from the proceeds of mortgage finance bonds,
238 other than a federally insured construction loan, a
239 federally insured mortgage or a federal mortgage,
240 which shall accrue from a date which is one month prior
241 to the date on which the first installment payment of
242 principal of such a loan is payable and which shall be
243 payable thereafter in monthly installments on the same
244 day of each successive month that installment payments
245 of principal of such a loan are payable, and (ii) with
246 respect to any loan, other than a federally insured
247 construction loan, a federally insured mortgage or a
248 federal mortgage, purchased, or invested in with such
249 proceeds, an equivalent amount which the housing
250 development fund shall set aside from payments it
251 receives on such loan or from any other source available
252 to the housing development fund for such use.

253 (19) "State sinking fund commission" means the
254 commission known as such and continued in existence
255 pursuant to article three, chapter thirteen of this code
256 and any body, board, person or commission which shall,
257 by law, hereafter succeed to the powers and duties of
258 such commission.

259 (20) "Temporary housing" means a specific work or
260 improvement within this state undertaken primarily to
261 provide dwelling accommodations, including the acqui-
262 sition, construction or rehabilitation of land, buildings
263 and improvements thereto, for temporary residential
264 housing, including, but not limited to, shelters for
265 homeless people, housing for victims of floods and other
266 disasters, shelters for abused or battered persons and
267 their children, housing for families with hospitalized
268 family members, housing for students and student
269 families, and housing for the handicapped and such

270 other nonhousing facilities as may be incidental or
271 appurtenant thereto.

272 (21) "Uninsured construction loans" means a construc-
273 tion loan for land development, residential housing or
274 nonresidential projects which is not secured by either a
275 federally insured mortgage or a federal mortgage, and
276 which is not insured by the United States or an
277 instrumentality thereof, and as to which there is no
278 commitment by the United States or an instrumentality
279 thereof to provide insurance.

280 (22) "Uninsured mortgage" and "uninsured mortgage
281 loan" means mortgage loans for land development,
282 residential housing or nonresidential projects which are
283 not insured or guaranteed by the United States or an
284 instrumentality thereof, and as to which there is no
285 commitment by the United States or an instrumentality
286 thereof to provide insurance.

§31-18-6. Corporate powers.

1 The housing development fund is hereby granted, has
2 and may exercise all powers necessary or appropriate
3 to carry out and effectuate its corporate purpose,
4 including, but not limited to, the following, except that
5 notwithstanding any other provision of this article, the
6 housing development fund shall not directly or indi-
7 rectly make a loan for or otherwise finance or review
8 any nonresidential project unless (a) the governor's
9 office of community and industrial development, in
10 writing, has referred the nonresidential project under
11 consideration to the housing development fund, and (b)
12 the board of directors of the housing development fund
13 shall have by resolution first found and determined (i)
14 that such loan or other financing is not available upon
15 reasonably equivalent terms and conditions from
16 financial institutions, based upon, among other perti-
17 nent factors, that at least three financial institutions
18 have had at least forty-five days to make a loan to or
19 otherwise finance such project, but have failed to act
20 upon or declined or refused opportunity within such
21 forty-five day period; and (ii) that such loan or other
22 financing is not available on reasonably equivalent

23 terms and conditions from the United States, this state,
24 any county or municipality in this state or any board,
25 agency, department or commission of any thereof:

26 (1) To make or participate in the making of federally
27 insured construction loans to sponsors of land develop-
28 ment, residential housing or nonresidential projects.
29 Such loans shall be made only upon determination by
30 the housing development fund that construction loans
31 are not otherwise available, wholly or in part, from
32 private lenders upon reasonably equivalent terms and
33 conditions;

34 (2) To make temporary loans, with or without inter-
35 est, but with such security for repayment as the housing
36 development fund determines reasonably necessary and
37 practicable, from the operating loan fund, if created,
38 established, organized and operated in accordance with
39 the provisions of section nineteen of this article, to
40 defray development costs to sponsors of land develop-
41 ment, residential housing or nonresidential projects
42 which are eligible or potentially eligible for federally
43 insured construction loans, federally insured mortgages,
44 federal mortgages, or uninsured construction loans or
45 uninsured mortgage loans;

46 (3) To make or participate in the making of long-term
47 federally insured mortgage loans to sponsors of land
48 development, residential housing or nonresidential
49 projects. Such loans shall be made only upon determi-
50 nation by the housing development fund that long-term
51 mortgage loans are not otherwise available, wholly or in
52 part, from private lenders upon reasonably equivalent
53 terms and conditions;

54 (4) To establish residential housing and nonresidential
55 and land development projects for counties declared to
56 be in a disaster area by the Federal Emergency
57 Management Agency or other agency or instrumentality
58 of the United States or this state;

59 (5) To accept appropriations, gifts, grants, bequests
60 and devises, and to utilize or dispose of the same to carry
61 out its corporate purpose;

62 (6) To make and execute contracts, releases, com-
63 promises, compositions and other instruments necessary
64 or convenient for the exercise of its powers, or to carry
65 out its corporate purpose;

66 (7) To collect reasonable fees and charges in connec-
67 tion with making and servicing loans, notes, bonds,
68 obligations, commitments and other evidences of
69 indebtedness, and in connection with providing techni-
70 cal, consultative and project assistance services;

71 (8) To invest any funds not required for immediate
72 disbursement in any of the following securities:

73 (i) Direct obligations of or obligations guaranteed by
74 the United States of America or for the payment of the
75 principal and interest on which the full faith and credit
76 of the United States of America is pledged;

77 (ii) Bonds, debentures, notes or other evidences of
78 indebtedness issued by any of the following agencies:
79 Banks for cooperatives; federal intermediate credit
80 banks; federal home loan bank system; Export-Import
81 Bank of the United States; federal land banks; Tennes-
82 see Valley Authority; United States Postal Service;
83 Inter-American Development Bank; International Bank
84 for Reconstruction and Development; Small Business
85 Administration; Washington Metropolitan Area Transit
86 Authority; General Services Administration; Federal
87 Financing Bank; Federal Home Loan Mortgage Corpo-
88 ration; Student Loan Marketing Association; Farmer's
89 Home Administration; the Federal National Mortgage
90 Association or the Government National Mortgage
91 Association; or any bond, debenture, note, participation
92 certificate or other similar obligation to the extent such
93 obligations are guaranteed by the Government National
94 Mortgage Association or Federal National Mortgage
95 Association or are issued by any other federal agency
96 and backed by the full faith and credit of the United
97 States of America;

98 (iii) Public housing bonds issued by public agencies or
99 municipalities and fully secured as to the payment of
100 both principal and interest by a pledge of annual
101 contributions under an annual contributions contract or

102 contracts with the United States of America; or
103 temporary notes, preliminary loan notes, or project notes
104 issued by public agencies or municipalities, in each case,
105 fully secured as to the payment of both principal and
106 interest by a requisition or payment agreement with the
107 United States of America;

108 (iv) Certificates of deposit, time deposits, investment
109 agreements, repurchase agreements or similar banking
110 arrangements with a member bank or banks of the
111 federal reserve system or a bank the deposits of which
112 are insured by the Federal Deposit Insurance Corpora-
113 tion, or its successor, or a savings and loan association
114 or savings bank the deposits of which are insured by the
115 Federal Savings and Loan Insurance Corporation, or its
116 successor, or government bond dealers reporting to,
117 trading with and recognized as primary dealers by a
118 Federal Reserve Bank: *Provided*, That such investments
119 shall only be made to the extent insured by the Federal
120 Deposit Insurance Corporation or the Federal Savings
121 and Loan Insurance Corporation or to the extent that the
122 principal amount thereof shall be fully collateralized by
123 obligations which are authorized investments for the
124 housing development fund pursuant to this section;

125 (v) Direct obligations of or obligations guaranteed by
126 the state of West Virginia;

127 (vi) Direct and general obligations of any other state,
128 municipality or other political subdivision within the
129 territorial United States: *Provided*, That at the time of
130 their purchase, such obligations are rated in either of
131 the two highest rating categories by a nationally
132 recognized bond-rating agency;

133 (vii) Any bond, note, debenture or annuity issued by
134 any corporation organized and operating within the
135 United States: *Provided*, That such corporation shall
136 have a minimum net worth of fifteen million dollars and
137 its securities or its parent corporation's securities are
138 listed on one or more of the national stock exchanges:
139 *Provided, however*, That (1) such corporation has earned
140 a profit in eight of the preceding ten fiscal years as
141 reflected in its statements, and (2) such corporation has

142 not defaulted in the payment of principal or interest on
143 any of its outstanding funded indebtedness during its
144 preceding ten fiscal years, and (3) the bonds, notes or
145 debentures of such corporation to be purchased are
146 rated "AA" or the equivalent thereof or better than
147 "AA" or the equivalent thereof by at least two or more
148 nationally recognized rating services such as Standard
149 and Poor's, Dun & Bradstreet, Best's or Moody's;

150 (viii) If entered into solely for the purpose of reducing
151 investment, interest rate, liquidity or other market risks
152 in relation to obligations issued or to be issued or owned
153 or to be owned by the housing development fund,
154 options, futures contracts (including index futures but
155 exclusive of commodities futures, options or other
156 contracts), standby purchase agreements or similar
157 hedging arrangements listed by a nationally recognized
158 securities exchange or a corporation described in (vii)
159 above;

160 (ix) Certificates, shares or other interests in mutual
161 funds, unit trusts or other entities registered under
162 section eight of the United States investment company
163 act of 1940, but only to the extent that the terms on
164 which the underlying investments are to be made
165 prevent any more than a minor portion of the pool which
166 is being invested in to consist of obligations other than
167 investments permitted pursuant to this section; and

168 (x) To the extent not inconsistent with the express
169 provisions of this section, obligations of the West
170 Virginia state board of investments or any other
171 obligation authorized as an investment for the West
172 Virginia state board of investments under article six,
173 chapter twelve of this code or for a public housing
174 authority under article fifteen, chapter sixteen of this
175 code;

176 (9) To sue and be sued;

177 (10) To have a seal and alter the same at will;

178 (11) To make, and from time to time, amend and
179 repeal bylaws and rules and regulations not inconsistent
180 with the provisions of this article;

181 (12) To appoint such officers, employees and consul-
182 tants as it deems advisable and to fix their compensation
183 and prescribe their duties;

184 (13) To acquire, hold and dispose of real and personal
185 property for its corporate purposes;

186 (14) To enter into agreements or other transactions
187 with any federal or state agency, any person and any
188 domestic or foreign partnership, corporation, association
189 or organization;

190 (15) To acquire real property, or an interest therein,
191 in its own name, by purchase or foreclosure, where such
192 acquisition is necessary or appropriate to protect any
193 loan in which the housing development fund has an
194 interest and to sell, transfer and convey any such
195 property to a buyer and, in the event of such sale,
196 transfer or conveyance cannot be effected with reasona-
197 ble promptness or at a reasonable price, to lease such
198 property to a tenant;

199 (16) To purchase or sell, at public or private sale, any
200 mortgage or other negotiable instrument or obligation
201 securing a construction, rehabilitation, improvement,
202 land development, mortgage or temporary loan;

203 (17) To procure insurance against any loss in connec-
204 tion with its property in such amounts, and from such
205 insurers, as may be necessary or desirable;

206 (18) To consent, whenever it deems it necessary or
207 desirable in the fulfillment of its corporate purpose, to
208 the modification of the rate of interest, time of payment
209 or any installment of principal or interest, or any other
210 terms, of mortgage loan, mortgage loan commitment,
211 construction loan, rehabilitation loan, improvement
212 loan, temporary loan, contract or agreement of any kind
213 to which the housing development fund is a party;

214 (19) To make and publish rules and regulations
215 respecting its federally insured mortgage lending,
216 uninsured mortgage lending, construction lending,
217 rehabilitation lending, improvement lending and lend-
218 ing to defray development costs and any such other rules
219 and regulations as are necessary to effectuate its
220 corporate purpose;

221 (20) To borrow money to carry out and effectuate its
222 corporate purpose and to issue its bonds or notes as
223 evidence of any such borrowing in such principal
224 amounts and upon such terms as shall be necessary to
225 provide sufficient funds for achieving its corporate
226 purpose, except that no notes shall be issued to mature
227 more than ten years from date of issuance and no bonds
228 shall be issued to mature more than fifty years from
229 date of issuance;

230 (21) To issue renewal notes, to issue bonds to pay notes
231 and, whenever it deems refunding expedient, to refund
232 any bonds by the issuance of new bonds, whether the
233 bonds to be refunded have or have not matured except
234 that no such renewal notes shall be issued to mature
235 more than ten years from date of issuance of the notes
236 renewed and no such refunding bonds shall be issued to
237 mature more than fifty years from the date of issuance;

238 (22) To apply the proceeds from the sale of renewal
239 notes or refunding bonds to the purchase, redemption or
240 payment of the notes or bonds to be refunded;

241 (23) To make grants and provide technical services to
242 assist in the purchase or other acquisition, planning,
243 processing, design, construction, or rehabilitation,
244 improvement or operation of residential housing,
245 nonresidential projects or land development: *Provided,*
246 That no such grant or other financial assistance shall be
247 provided except upon a finding by the housing develop-
248 ment fund that such assistance and the manner in which
249 it will be provided will preserve and promote residential
250 housing in this state or the interests of this state in
251 maintaining or increasing employment or the tax base;

252 (24) To provide project assistance services for residen-
253 tial housing, nonresidential projects and land develop-
254 ment, including, but not limited to, management,
255 training and social and other services;

256 (25) To promote research and development in scien-
257 tific methods of constructing low cost land development,
258 residential housing or nonresidential projects of high

259 durability including grants, loans or equity contribu-
260 tions for research and development purposes: *Provided*,
261 That no such grant or other financial assistance shall be
262 provided except upon a finding by the housing develop-
263 ment fund that such assistance and the manner in which
264 it will be provided will preserve and promote residential
265 housing in this state or the interests of this state in
266 maintaining and increasing employment and the tax
267 base;

268 (26) With the proceeds from the issuance of notes or
269 bonds of the housing development fund, including, but
270 not limited to, mortgage finance bonds, or with other
271 funds available to the housing development fund for
272 such purpose, to participate in the making of or to make
273 loans to mortgagees approved by the housing develop-
274 ment fund and take such collateral security therefor as
275 is approved by the housing development fund and to
276 invest in, purchase, acquire, sell or participate in the
277 sale of, or take assignments of, notes and mortgages,
278 evidencing loans for the construction, rehabilitation,
279 improvement, purchase or refinancing of land develop-
280 ment, residential housing or nonresidential projects in
281 this state: *Provided*, That the housing development fund
282 shall obtain such written assurances as shall be
283 satisfactory to it that the proceeds of such loans,
284 investments or purchases will be used, as nearly as
285 practicable, for the making of or investment in long-
286 term federally insured mortgage loans or federally
287 insured construction loans, uninsured mortgage loans or
288 uninsured construction loans, for land development,
289 residential housing or nonresidential projects or that
290 other moneys in an amount approximately equal to such
291 proceeds shall be committed and used for such purpose;

292 (27) To make or participate in the making of unin-
293 sured construction loans for land development, residen-
294 tial housing or nonresidential projects. Such loans shall
295 be made only upon determination by the housing
296 development fund that construction loans are not
297 otherwise available, wholly or in part, from private
298 lenders upon reasonably equivalent terms and
299 conditions;

300 (28) To make or participate in the making of long-
301 term uninsured mortgage loans for land development,
302 residential housing or nonresidential projects. Such
303 loans shall be made only upon determination by the
304 housing development fund that long-term mortgage
305 loans are not otherwise available, wholly or in part, from
306 private lenders upon reasonably equivalent terms and
307 conditions;

308 (29) To obtain options to acquire real property, or any
309 interest therein, in its own name, by purchase, or lease,
310 or otherwise, which is found by the housing development
311 fund to be suitable, or potentially suitable, as a site, or
312 as part of a site, for land development or the construc-
313 tion of residential housing or nonresidential projects; to
314 hold such real property or to acquire by purchase or
315 otherwise and to transfer by sale or otherwise any
316 ownership or equity interests in any other legal entity
317 which holds such real property; to finance the perfor-
318 mance of land development, residential housing or
319 nonresidential projects on or in connection with any such
320 real property or to perform land development, residen-
321 tial housing or nonresidential projects on or in connec-
322 tion with any such real property; to own, operate and
323 sponsor or participate in the sponsorship of land
324 development, residential housing or nonresidential
325 projects; or to sell, transfer and convey, lease or
326 otherwise dispose of such real property, or lots, tracts
327 or parcels of such real property, for such prices, upon
328 such terms, conditions and limitations, and at such time
329 or times as the housing development fund shall
330 determine;

331 (30) To make loans, with or without interest, but with
332 such security for repayment as the housing development
333 fund determines reasonably necessary and practicable
334 from the land development fund, if created, established,
335 organized and operated in accordance with the provi-
336 sions of section twenty-a of this article, to sponsors of
337 land development, to defray development costs and other
338 costs of land development;

339 (31) To exercise all of the rights, powers and author-
340 ities of a public housing authority as set forth and

341 provided in article fifteen, chapter sixteen of this code,
342 in any area or areas of the state which the housing
343 development fund shall determine by resolution to be
344 necessary or appropriate;

345 (32) To provide assistance to urban renewal projects
346 in accordance with the provisions of section twenty-
347 eight, article eighteen, chapter sixteen of this code and
348 in so doing to exercise all of the rights, powers and
349 authorities granted in this article or in article eighteen,
350 chapter sixteen of this code, in and for any communities
351 of the state which the housing development fund shall
352 determine by resolution to be necessary or appropriate;

353 (33) To make or participate in the making of loans for
354 the purpose of rehabilitating or improving existing
355 residential and temporary housing or nonresidential
356 projects, or to owners of existing residential or tempor-
357 ary housing for occupancy by eligible persons and
358 families for the purpose of rehabilitating or improving
359 such residential or temporary housing or nonresidential
360 projects and, in connection therewith, to refinance
361 existing loans involving the same property. Such loans
362 shall be made only upon determination by the housing
363 development fund that rehabilitation or improvement
364 loans are not otherwise available, wholly or in part, from
365 private lenders upon reasonably equivalent terms and
366 conditions;

367 (34) Whenever the housing development fund deems
368 it necessary in order to exercise any of its powers set
369 forth in subdivision (28) of this section, and upon being
370 unable to agree with the owner or owners of real
371 property or interest therein sought to be acquired by the
372 fund upon a price for acquisition of private property not
373 being used or operated by the owner in the production
374 of agricultural products, to exercise the powers of
375 eminent domain in the acquisition of such real property
376 or interest therein in the manner provided under
377 chapter fifty-four of this code, and the purposes set forth
378 in subdivision (28) of this section are hereby declared to
379 be public purposes for which private property may be
380 taken. For the purposes of this section, the determina-
381 tion of "use or operation by the owner in the production

382 of agricultural products" means that the principal use
383 of such real estate is for the production of food and fiber
384 by agricultural production other than forestry, and the
385 fund shall not initiate or exercise any powers of eminent
386 domain without first receiving an opinion in writing
387 from both the governor and the commissioner of
388 agriculture of this state that at the time the fund had
389 first attempted to acquire such real estate or interest
390 therein, such real estate or interest therein was not in
391 fact being used or operated by the owner in the
392 production of agricultural products; and

393 (35) To acquire, by purchase or otherwise, and to hold,
394 transfer, sell, assign, pool or syndicate, or participate in
395 the syndication of, any loans, notes, mortgages, securi-
396 ties or debt instruments collateralized by mortgages or
397 interests in mortgages or other instruments evidencing
398 loans or equity interests in or for the construction,
399 rehabilitation, improvement, renovation, purchase or
400 refinancing of land development, residential housing
401 and nonresidential projects in this state.

§31-18-20a. Land development fund.

1 (a) The board of directors of the housing development
2 fund may create and establish a special revolving fund
3 of moneys made available by appropriation, grant,
4 contribution or loan, to be known as the land develop-
5 ment fund and to be governed, administered and
6 accounted for by the directors, officers and managerial
7 staff of the housing development fund as a special
8 purpose account separate and distinct from any other
9 moneys, fund or funds owned and managed by the
10 housing development fund.

11 (b) The purpose of the land development fund shall be
12 to provide a source from which the housing development
13 fund may finance development costs and land develop-
14 ment in this state by making loans or grants therefrom,
15 such loans to be with or without interest and with such
16 security for repayment as the housing development fund
17 deems reasonably necessary and practicable, or by
18 expending moneys therefrom, for development costs and
19 land development in this state.

20 (c) The housing development fund may invest and
21 reinvest all moneys in the land development fund in any
22 investments authorized under section six of this article,
23 pending the disbursement thereof in connection with the
24 financing of development costs and land development in
25 this state.

26 (d) No loans shall be made by the housing develop-
27 ment fund from the land development fund except in
28 accordance with a written loan agreement which shall
29 include, but not be limited to, the following terms and
30 conditions:

31 (1) The proceeds of all such loans shall be used only
32 for development costs and land development;

33 (2) All such loans shall be repaid in full, with or
34 without interest, as provided in the agreement;

35 (3) All repayments shall be made concurrent with
36 receipt by the borrower of the proceeds of a construction
37 loan or mortgage, as the case may be, or at such other
38 times as the housing development fund deems reason-
39 ably necessary or practicable; and

40 (4) Specification of such security for repayments upon
41 such terms and conditions as the housing development
42 fund deems reasonably necessary or practicable.

43 (e) No grants shall be made by the housing develop-
44 ment fund from the land development fund except in
45 accordance with a written grant agreement which shall
46 require that the proceeds of all such grants shall be used
47 only for development costs or land development and
48 containing such other terms and provisions as the
49 housing development fund may require to ensure that
50 the public purposes of this article are furthered by such
51 grant.

52 (f) The housing development fund may expend any
53 income from the financing of development costs and
54 land development with moneys in the land development
55 fund, and from investment of such moneys, in payment,
56 or reimbursement, of all expenses of the housing
57 development fund which, as determined in accordance
58 with procedures approved by the board of directors of

59 the housing development fund, are fairly allocable to
60 such financing or its land-development activities:
61 *Provided*, That no funds from the land development
62 fund shall be used to carry on propaganda, or otherwise
63 attempt to influence legislation.

**§31-18-21. Prohibition on funds inuring to the benefit of
or being distributable to directors, officers
or private persons; transactions between
the housing development fund and direc-
tors or officers having certain interests in
such transactions.**

1 (a) No part of the funds of the housing development
2 fund, or of the operating loan fund, or of the land
3 development fund, shall inure to the benefit of or be
4 distributable to its directors or officers or other private
5 persons except that the housing development fund shall
6 be authorized and empowered to pay reasonable com-
7 pensation, other than to the directors, including the
8 chairman, vice chairman and treasurer of the board of
9 directors and the secretary of the board of directors, for
10 services rendered and to make loans and exercise its
11 other powers as previously specified in furtherance of
12 its corporate purpose: *Provided*, That no such loans shall
13 be made, and no property shall be purchased or leased
14 from, or sold, leased or otherwise disposed of, to any
15 director or officer of the housing development fund.

16 (b) Notwithstanding any provision contained in
17 paragraph (a) of this section, no loans shall be made by
18 the housing development fund to, and no property shall
19 be purchased or leased from, or sold, leased or otherwise
20 disposed of to, any corporation or other entity in which
21 any officer or director is a stockholder or is otherwise
22 financially interested, unless:

23 (1) The interest of such director or officer in such
24 transaction is specifically and fully disclosed to the
25 board of directors of the housing development fund at
26 the time it authorizes, approves or ratifies such
27 transaction and the fact and nature of such interest are
28 stated in the minutes of each meeting of the board of
29 directors at which such transaction is considered;

30 (2) Such transaction is fair and reasonable to the
31 housing development fund; and

32 (3) In the case of a director, such director abstains
33 from voting or written consent as to the authorization,
34 approval or ratification of such transaction by the board
35 of directors of the housing development fund.

**§31-18-24. Annual audit; reports to joint committee on
government and finance; information to
joint committee or legislative auditor.**

1 The housing development fund shall cause an annual
2 audit to be made by an independent certified public
3 accountant of its books, accounts and records, with
4 respect to its receipts, disbursements, contracts, mort-
5 gages, leases, assignments, loans and all other matters
6 relating to its financial operations, including those of the
7 operating loan fund, the land development fund, and the
8 mortgage finance bond insurance fund. The person
9 performing such audit shall furnish copies of the audit
10 report to the commissioner of finance and administra-
11 tion, where they shall be placed on file and made
12 available for inspection by the general public. The
13 person performing such audit shall also furnish copies
14 of the audit report to the speaker of the House of
15 Delegates, the president of the Senate and the majority
16 and minority leaders of both houses.

17 In addition to the foregoing annual audit report, the
18 housing development fund shall also render every six
19 months to the joint committee on government and
20 finance a report setting forth in detail a complete
21 analysis of the activities, indebtedness, receipts and
22 financial affairs of such fund and the operating loan
23 fund, the land development fund, and the mortgage
24 finance bond insurance fund. Upon demand, the housing
25 development fund shall also submit to the joint commit-
26 tee on government and finance or the legislative auditor
27 any other information requested by such committee or
28 the legislative auditor.

**§31-18-26. Projects not to be deemed public
improvements.**

1 No project or business facility acquired, constructed,

2 maintained, or financed in whole or in part by the
3 housing development fund shall be deemed to be a
4 "public improvement" within the meaning of the
5 provisions of article five-a, chapter twenty-one of this
6 code, as a result of such financing.

**§31-18-27. Documentary materials concerning trade
secrets; commercial, financial, or personal
information; confidentiality.**

1 Any documentary material or data made or received
2 by the housing development fund for the purpose of
3 furnishing assistance, to the extent that such material
4 or data consists of trade secrets, commercial, financial
5 or personal information regarding the financial position
6 or business operation of such business or person, shall
7 not be considered public records and shall be exempt
8 from disclosure pursuant to the provisions of chapter
9 twenty-nine-b of this code. Any discussion or consider-
10 ation of such trade secrets, commercial, financial or
11 personal information may be held by the housing
12 development fund in executive session closed to the
13 public, notwithstanding the provisions of article nine-a,
14 chapter six of this code: *Provided*, That the housing
15 development fund shall make publicly available the
16 following information regarding executed loans: (1) the
17 name of the debtor, (2) location(s) of the project, (3)
18 amount of the loan or financial assistance provided by
19 the fund, (4) the purpose of the loan or financial
20 assistance, (5) the term, rate, and interest of the loan,
21 and (6) the fixed assets which serve as security for the
22 loan.

CHAPTER 39

(H. B. 2046—By Delegate Faircloth)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article one,
chapter seven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to county

commissions generally; construction of waterworks; sewers and sewage disposal plants; improvements of streets, alleys and sidewalks; and providing for the assessment of cost of sanitary sewers, and maintenance of roads not in the state road system.

Be it enacted by the Legislature of West Virginia:

That section three-a, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3a. Construction of waterworks; sewers and sewage disposal plants; improvements of streets, alleys and sidewalks; assessment of cost of sanitary sewers, improved streets and maintenance of roads not in the state road system.

1 In addition to all other powers and duties now
2 conferred by law upon county commissions, such
3 commissions are hereby authorized and empowered to
4 install, construct, repair, maintain and operate water-
5 works, water mains, sewer lines and sewage disposal
6 plants in connection therewith within their respective
7 counties: *Provided*, That the county commission of
8 Webster County is authorized to expend county funds in
9 the opening of, and upkeep of a sulphur well now situate
10 on county property: *Provided, however*, That such
11 authority and power herein conferred upon county
12 commissions shall not extend into the territory within
13 any municipal corporation: *Provided further*, That any
14 county commission is hereby authorized to enter into
15 contracts or agreements with any municipality within
16 the county, or with a municipality in an adjoining
17 county, with reference to the exercise of the powers
18 vested in such commissions by this section.

19 In addition to the foregoing, the county commission
20 shall have the power to improve streets, sidewalks and
21 alleys and lay sewers and enter into contracts for
22 maintenance of county roads and subdivision roads used
23 by the public but not in the state road system as follows:
24 Upon petition in writing duly verified, of the persons,

25 firms or corporations owning not less than sixty percent
26 of the frontage of the lots abutting on both sides of any
27 street or alley, between any two cross-streets, or between
28 a cross-street and an alley in any unincorporated
29 community, requesting the county commission so to do
30 according to plans and specifications submitted with
31 such petition and offering to have their property so
32 abutting assessed not only with their portion of the cost
33 of such improvement abutting upon their respective
34 properties, but also offering to have their said properties
35 proportionately assessed with the total cost of paving,
36 grading and curbing the intersections of such streets
37 and alleys, or the total cost of maintenance of county
38 roads or subdivision roads used by the public but not
39 in the state road system, the county commission may
40 cause any such street or alley to be improved or paved
41 or repaved substantially with the materials and accord-
42 ing to such plans and specifications as hereinafter
43 provided: *Provided*, That the county commission is
44 further authorized, if the said county commission so
45 determines by a unanimous vote of its constituted
46 membership, that two or more intersecting streets,
47 sidewalks, alleys and sewers, should be improved as one
48 project, in order to satisfy peculiar problems resulting
49 from access as well as drainage problems, then, in that
50 event, the said county commission may order such
51 improvements as one single unit and project, upon
52 petition in writing duly verified of the persons, firms or
53 corporations owning not less than sixty percent of the
54 frontage of the lots abutting on both sides of all streets
55 or alleys, or portions thereof included by said county
56 commission in said unit and project.

57 The total cost including labor and materials, engineer-
58 ing, and legal service of grading and paving, curbing,
59 improving any such road, street or alley (including the
60 cost of the intersections) and assessing the cost thereof
61 shall be borne by the owners of the land abutting upon
62 such road, street or alley when the work is completed
63 and accepted according to the following plan, that is to
64 say, payment is to be made by all landowners on either
65 side of such road, street or alley so paved or improved
66 in such proportion of the total cost as the frontage in

67 feet of each owner's land so abutting bears to the total
68 frontage of all the land so abutting on such road, street
69 or alley, so paved or improved as aforesaid, which
70 computation shall be made by the county engineer or
71 surveyor and certified by him to the clerk of said
72 commission.

73 Upon petition in writing duly verified, of the persons,
74 firms or corporations owning not less than sixty percent
75 of the frontage of the lots abutting on one side of any
76 county or subdivision road or roads between any two
77 cross-roads, all used by the public but not in the state
78 road system or street between any two cross-streets or
79 between a cross-street and an alley in any unincorporated
80 community requesting the county commission so
81 to do according to plans and specifications submitted
82 with such petition and offering to have their property
83 so abutting assessed with the total cost thereof, the
84 county commission may cause any sidewalk to be
85 improved, or paved, or repaved, substantially with such
86 materials according to such plans and specifications and
87 the total cost including labor and materials, engineering
88 and legal service of improving, grading, paving or
89 repaving such sidewalk and assessing the cost thereof
90 shall, when the work is completed and accepted, be
91 assessed against the owners of the lots or fractional part
92 of lots abutting on such sidewalk, in such portion of the
93 total cost as the frontage in feet of each owner's land
94 so abutting bears to the total frontage of all lots so
95 abutting on such sidewalk so paved or improved, as
96 aforesaid, which computation shall be made by the
97 county engineer or surveyor and certified by him to the
98 clerk of said commission.

99 Upon petition in writing duly verified, of the persons,
100 firms or corporations owning not less than sixty percent
101 of the frontage of the lots abutting on both sides of any
102 street or alley, in any unincorporated community
103 requesting the county commission so to do according to
104 plans and specifications submitted with such petition
105 and offering to have their property so abutting assessed
106 with the cost, as hereinafter provided, the county
107 commission may lay and construct sanitary sewers in

108 any street or alley with such materials and substantially
109 according to such plans and specifications and when
110 such sewer is completed and accepted, the county
111 engineer or surveyor shall report to the county commis-
112 sion, in writing, the total cost of such sewer and a
113 description of the lots and lands, as to the location,
114 frontage, depth and ownership liable for such sewer
115 assessment, so far as the same may be ascertained,
116 together with the amount chargeable against each lot
117 and owner, calculated in the following manner: The total
118 cost of constructing and laying the sewer including
119 labor, materials, legal and engineering services shall be
120 borne by the owners of the land abutting upon the
121 streets and alleys, in which the sewer is laid according
122 to the following plan: Payment is to be made by each
123 landowner on either side of such portion of a street or
124 alley in which such sewer is laid, in such proportions
125 as the frontage of his land upon said street or alley bears
126 to the total frontage of all lots so abutting on such street
127 or alley. In case of a corner lot, frontage is to be
128 measured along the longest dimensions thereof abutting
129 on such street or alley in which such sewer is laid. Any
130 lot having a depth of two hundred feet or more, and
131 fronting on two streets or alleys, one in the front and
132 one in the rear of said lot, shall be assessed on both of
133 said streets or alleys if a sewer is laid in both such
134 streets and alleys. Where a corner lot has been assessed
135 on the end it shall not be assessed on the side for the
136 same sewer and where it has been assessed on the side
137 it shall not be assessed on the end for the same sewer.

138 If the petitioners request the improvement of any such
139 county road or subdivision road, street, alley or sidewalk
140 in a manner which does not require the permanent
141 paving or repaving thereof, the county commission shall
142 likewise have authority to improve such county road or
143 subdivision road, street, alley or sidewalk, substantially
144 as requested in such petition, and the total cost thereof
145 including labor, materials, engineering and legal
146 services shall be assessed against the abutting owners
147 in the proportion which the frontage of their lots
148 abutting upon such county road or subdivision road,
149 street, alley or sidewalk bears to the total frontage of

150 all lots abutting upon such street, alley or sidewalk so
151 improved.

152 Upon the filing of such petition and before work is
153 begun, or let to contract, the county commission shall
154 fix a time and place for hearing protests and shall
155 require the petitioners to post notice of such hearing in
156 at least two conspicuous places on the county road or
157 subdivision road, street, alley or sidewalk affected, and
158 to give notice thereof by publication of such notice as
159 a Class I legal advertisement in compliance with the
160 provisions of article three, chapter fifty-nine of this code,
161 and the publication area for such publication shall be
162 the county in which the improvement is to be made. The
163 hearing shall be held not less than ten nor more than
164 thirty days after the filing of such petition.

165 At the time and place set for hearing protests the
166 county commission may examine witnesses and consider
167 other evidence to show that said petition was filed in
168 good faith; that the signatures thereto are genuine; and
169 that the proposed improvement, paving, repaving or
170 sewerage will result in special benefits to all owners of
171 property abutting on said county road or subdivision
172 road, street, alley or sidewalk in an amount at least
173 equal in value to the cost thereof. The commission shall
174 within ten days thereafter enter a formal order stating
175 its decision and if the petition be granted shall proceed
176 after due advertisement, reserving the right to reject
177 any or all bids, to let a contract for such work and
178 materials to the lowest responsible bidder.

179 Any owner of property abutting upon said county road
180 or subdivision road, street, alley or sidewalk aggrieved
181 by such order shall have the right to review the same
182 on the record made before the county commission by
183 filing within ten days after the entry of such order a
184 petition with the clerk of the circuit court assigning
185 errors and giving bond in a penalty to be fixed by the
186 circuit court to pay any costs or expenses incurred upon
187 such appeal should the order of the county commission
188 be affirmed. The circuit court shall proceed to review
189 the matter as in other cases of appeal from the county
190 commission.

191 All assessments made under this section shall be
192 certified to the county clerk and recorded in a proper
193 trust deed book and indexed in the name of the owner
194 of any lot or fractional part of a lot so assessed. The
195 assessment so made shall be a lien on the property liable
196 therefor, and shall have priority over all other liens
197 except those for taxes, and may be enforced by a civil
198 action in the name of the contractor performing the
199 work in the same manner as provided for other liens for
200 permanent improvements. Such assessment shall be
201 paid in not more than ten equal annual installments,
202 bearing interest at a rate not to exceed twelve percent
203 per annum, as follows: The first installment, together
204 with interest on the whole assessment, shall be paid not
205 later than one year from the date of such assessment,
206 and a like installment with interest on the whole amount
207 remaining unpaid each year thereafter until the
208 principal and all interest shall have been paid in full.

209 The county commission may issue coupon-bearing
210 certificates payable in not more than ten equal annual
211 installments for the amount of such assessment and the
212 interest thereon, to be paid by the owner of any lot or
213 fractional part thereof, fronting on such county road or
214 subdivision road, street, alley or sidewalk which has
215 been improved, paved, or repaved or in which a sewer
216 has been laid, as aforesaid, and the holder of said
217 certificate shall have a lien having priority over all other
218 liens except those for taxes upon the lot or part of lot
219 fronting on such county road or subdivision road, street,
220 alley or sidewalk, and such certificate shall likewise
221 draw interest from the date of assessment at a rate not
222 to exceed twelve percent per annum, and payment
223 thereof may be enforced in the name of the holder of
224 said certificate by proper civil action in any court
225 having jurisdiction to enforce such lien.

226 Certificates authorized under this section may be
227 issued, sold or negotiated to the contractor doing the
228 work, or to his assignee, or to any person, firm or
229 corporation: *Provided*, That the county commission in
230 issuing such certificates shall not be held as a guarantor,
231 or in any way liable for the payment thereof.

232 Certificates so issued shall contain a provision to the
233 effect that in the event of default in the payment of any
234 one or more of said installments, when due, said default
235 continuing for a period of sixty days, all unpaid
236 installments shall thereupon become due and payable,
237 and the owner of said certificates may proceed to collect
238 the unpaid balance thereof in the manner hereinbefore
239 provided.

240 In all cases where petitioners request paving or
241 repaving, or the laying of sewers under the provisions
242 of this section, the county commission shall let the work
243 of grading, paving, curbing or sewerage to contract to
244 the lowest responsible bidder. In each such case the
245 county commission shall require a bond in the penalty
246 of the contract price guaranteeing the faithful perfor-
247 mance of the work and each such contract shall require
248 the contractor to repair any defects due to defective
249 workmanship or materials discovered within one year
250 after the completion of the work.

251 Upon presentation to the clerk of the county commis-
252 sion of the certificates evidencing the lien, duly canceled
253 and marked paid by the holder thereof, or evidence of
254 payment of the assessment if no certificates have been
255 issued, said clerk shall execute and acknowledge a
256 release of the lien which release may be recorded, as
257 other releases in the office of the clerk of the county
258 commission.

259 The owner of any lot or fractional part of a lot
260 abutting upon such county road or subdivision road,
261 street, alley or sidewalk so improved, paved, repaved, or
262 sewerage shall have the right to anticipate the payment
263 of any such assessment or certificate by paying the
264 principal amount due, with interest accrued thereon to
265 date of payment, and also to pay the entire amount,
266 without interest at any time, within thirty days follow-
267 ing the date of the assessment.

268 Nothing in this section contained shall be construed
269 to authorize the county commissions of the various
270 counties to acquire any road construction, ditching or
271 paving equipment. The county commissions are hereby

272 authorized to rent from the state road commissioner or
273 any other person, firm or corporation such equipment
274 as may be necessary from time to time, to improve any
275 county road or subdivision road used by the public but
276 not in the state road system, street or sidewalk which
277 petitioners do not desire to have paved in a permanent
278 manner, and for such purpose to employ such labor as
279 may be necessary but no expense connected therewith
280 shall be charged to any county funds.

281 No county commission shall be under any duty after
282 the paving, repaving or improvement of any county road
283 or subdivision road used by the public but not in the
284 state road system, street, alley or sidewalk or the laying
285 of any sanitary sewer under the provisions of this
286 section, to maintain or repair the same, but any such
287 commission shall have authority upon petition duly
288 verified, signed by at least sixty percent of the owners
289 of property abutting upon any improvement made under
290 this section, to maintain or repair such improvement or
291 sewer and to assess the cost thereof against the owners
292 of such abutting property in the same manner as the
293 cost of the original improvement.

CHAPTER 40

(S. B. 151—By Senators Hawse and J. Manchin)

[Passed March 14, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-ee; to amend article thirteen, chapter eight of said code by adding thereto a new section, designated section fifteen-a; and to amend article one, chapter eleven-a of said code by adding thereto a new section, designated section eight-a, all relating to authorizing county commissions, sheriffs and municipalities to enter into contracts with banking institutions to receive payment of service fees, assessments, fines, property taxes and other taxes.

Be it enacted by the Legislature of West Virginia:

That article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-ee; that article thirteen, chapter eight of said code be amended by adding thereto a new section, designated section fifteen-a; and that article one, chapter eleven-a of said code be amended by adding thereto a new section, designated section eight-a, all to read as follows:

Chapter

7. County Commissions and Officers.

8. Municipal Corporations.

11A. Collection and Enforcement of Property Taxes.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ee. Providing for payment of service fees at banking institutions.

1 Notwithstanding any other provision of this code the
2 county commission may enter into a contract with one
3 or more banking institutions, as defined in section two,
4 article one, chapter thirty-one-a of this code, doing
5 business in the county for the purpose of receiving
6 payment of any service fee authorized in this article or
7 elsewhere in this code.

8 Any such contract shall specify the manner in which
9 the fees received shall be paid over to the county and
10 a method for verification by the county commission of
11 all amounts received pursuant to the contract. The
12 contract may provide for the payment of a reasonable
13 fee for the provision of such services by the banking
14 institution.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-15a. Providing for payment at banking institutions.

1 Notwithstanding any other provision of this code the
2 treasurer of the municipality, or other individual who

3 may be designated by general law, by charter provision
4 or by the governing body, to collect and promptly pay
5 into the municipal treasury all taxes, fines, special
6 assessments and other moneys due the municipality,
7 may enter into a contract with one or more banking
8 institutions, as defined in section two, article one,
9 chapter thirty-one-a of this code, doing business in the
10 municipality for the purpose of receiving payment of
11 municipal taxes, fines, assessments and other moneys.

12 Any such contract shall specify the manner in which
13 the taxes, fines, assessments and other moneys received
14 shall be paid over to the municipality and a method for
15 verification by the treasurer of the municipality of all
16 amounts received pursuant to the contract. The contract
17 may provide for the payment of a reasonable fee for the
18 provision of such services by the banking institutions.

CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

§11A-1-8a. Providing for payment at banking institutions.

1 Notwithstanding any other provision of this code the
2 sheriff, with the consent of the county commission, may
3 enter into a contract with one or more banking institu-
4 tions, as defined in section two, article one, chapter
5 thirty-one-a of this code, doing business in the county for
6 the purpose of receiving payment of property taxes.

7 Any such contract shall specify the manner in which
8 all taxes received shall be paid to the sheriff and a
9 method for verification by the sheriff and the county
10 commission of all amounts received pursuant to the
11 contract. The contract may provide for the payment of
12 a reasonable fee for the provision of such services by the
13 banking institution.

14 Nothing herein may be construed to affect the amount
15 of the commission due the sheriff provided for in section
16 seventeen of this article.

CHAPTER 41

(Com. Sub. for S. B. 222—By Senators Jackson, Tomblin and Jones)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-ff; and to amend and reenact section five, article twelve, chapter eight of said code, all relating to county commissions' and county health officers' duties to require clearance of refuse and debris on private lands; notice of demand and the contents thereof to be sent to private landowners requiring them to clear their lands of refuse and debris; the proper procedure to contest a demand to clear private land; and municipalities' authorization to require the clearance of private land of refuse and debris.

Be it enacted by the Legislature of West Virginia:

That article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-ff; and that section five, article twelve, chapter eight of said code be amended and reenacted, all to read as follows:

Chapter

7. County Commissions and Officers.
8. Municipal Corporations.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ff. Duty to require clearance of refuse and debris from private lands; notice of demand thereof; procedure to contest demand.

- 1 In addition to all other powers and duties conferred
- 2 by law upon county commissions, as set forth in this
- 3 article, and county health officers, as set forth in section
- 4 two, article two, chapter sixteen of this code, such
- 5 commissions and health officers are hereby authorized

6 and obliged to require clearance of any refuse or debris
7 consisting of remnants or remains of any unused or
8 unoccupied dwelling, nonfarm building, structure or
9 manmade appurtenance on all private lands within their
10 respective scopes of authority by the owners thereof that
11 has accumulated as the result of any natural or
12 manmade force or effect which presents a safety or
13 health hazard or which has deteriorated to such a
14 degree as to be unsightly, visually offensive and be
15 depressive of the value of the adjacent properties or uses
16 of such properties.

17 Upon a determination by a county commission or
18 county health officer that substantial accumulations of
19 refuse or the presence of debris, as described above,
20 exist on any such private lands, notice shall be for-
21 warded to the owner thereof informing the landowner
22 of the following:

23 (a) Of the commission's or health officer's demand to
24 remove all refuse and debris within ninety days of the
25 receipt of such notice unless an extension be granted by
26 said commission or health officer;

27 (b) Of the landowner's right to contest such demand
28 and of the proper procedure in which to do so;

29 (c) That if the landowner fails to both properly contest
30 and comply with the commission's or health officer's
31 demand, that removal will be achieved otherwise and
32 that the reasonable costs incurred thereto will become
33 a civil debt owed by the landowner to the county;

34 (d) That if the county incurs costs of removal and the
35 landowner fails to pay such costs within two months of
36 such removal that a judgment lien on the subject
37 property will be filed in the county clerk's office wherein
38 the subject property exists.

39 The commission or health officer shall send notice as
40 described herein by certified mail. If, for any reason,
41 such certified mail is returned without evidence of
42 proper receipt thereof, then in such event, a Class III-
43 0 legal advertisement shall be published in a newspaper
44 of general circulation in the county wherein such land

45 is situated, in order to render proper notice in accor-
46 dance with this section: *Provided*, That if the commis-
47 sion or health officer determines, after notice and
48 inquiry as provided herein, that such refuse or debris
49 was created by someone other than the present lan-
50 downer, without such landowner's expressed or implied
51 permission, the commission or health officer shall
52 remove any such refuse or debris and shall apply to and
53 be eligible to receive from the solid waste reclamation
54 and environmental response fund created under section
55 five-a, article five-f, chapter twenty of this code for
56 reimbursement for all reasonable costs incurred for
57 such removal.

58 In the event any landowner desires to contest any
59 demand brought forth pursuant to this section, the
60 landowner shall do so in accordance with article three,
61 chapter fifty-eight of this code.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFIC- ERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

PART III. GENERAL POWERS OF MUNICIPALITIES AND GOVERNING BODIES.

§8-12-5. General powers of every municipality and the governing body thereof.

1 In addition to the powers and authority granted by (i)
2 the constitution of this state, (ii) other provisions of this
3 chapter, (iii) other general law, and (iv) any charter, and
4 to the extent not inconsistent or in conflict with any of
5 the foregoing except special legislative charters, every
6 municipality and the governing body thereof shall have
7 plenary power and authority therein by ordinance or
8 resolution, as the case may require, and by appropriate
9 action based thereon:

10 (1) To lay off, establish, construct, open, alter, curb,
11 recurb, pave or repave and keep in good repair, or
12 vacate, discontinue and close, streets, avenues, roads,

13 alleys, ways, sidewalks, drains and gutters, for the use
14 of the public, and to improve and light the same, and
15 have them kept free from obstructions on or over them
16 which have not been authorized pursuant to the
17 succeeding provisions of this subdivision (1); and, subject
18 to such terms and conditions as the governing body shall
19 prescribe, to permit, without in any way limiting the
20 power and authority granted by the provisions of article
21 sixteen of this chapter, any person to construct and
22 maintain a passageway, building or other structure
23 overhanging or crossing the airspace above a public
24 street, avenue, road, alley, way, sidewalk or crosswalk,
25 but before any such permission for any person to
26 construct and maintain a passageway, building or other
27 structure overhanging or crossing any such airspace is
28 granted, a public hearing thereon shall be held by the
29 governing body after publication of a notice of the date,
30 time, place and purpose of such public hearing has been
31 published as a Class I legal advertisement in compliance
32 with the provisions of article three, chapter fifty-nine of
33 this code, and the publication area for such publication
34 shall be the municipality: *Provided*, That any such
35 permit so granted shall automatically cease and termi-
36 nate in the event of abandonment and nonuse thereof for
37 the purposes intended for a period of ninety days, and
38 all rights therein or thereto shall revert to such
39 municipality for its use and benefit;

40 (2) To provide for the opening and excavation of
41 streets, avenues, roads, alleys, ways, sidewalks, cross-
42 walks and public places belonging to the municipality
43 and regulate the conditions under which any such
44 opening may be made;

45 (3) To prevent by proper penalties the throwing,
46 depositing or permitting to remain on any street,
47 avenue, road, alley, way, sidewalk, square or other
48 public place any glass, scrap iron, nails, tacks, wire,
49 other litter, or any offensive matter or anything likely
50 to injure the feet of individuals or animals or the tires
51 of vehicles;

52 (4) To regulate the use of streets, avenues, roads,

53 alleys, ways, sidewalks, crosswalks and public places
54 belonging to the municipality;

55 (5) To regulate the width of streets, avenues and
56 roads, and, subject to the provisions of article eighteen
57 of this chapter, to order the sidewalks, footways and
58 crosswalks to be paved, repaved, curbed or recurbed
59 and kept in good order, free and clean, by the owners
60 or occupants thereof or of the real property next
61 adjacent thereto;

62 (6) To establish, construct, alter, operate and main-
63 tain, or discontinue, bridges, tunnels and ferries and
64 approaches thereto;

65 (7) To provide for the construction and maintenance
66 of water drains, the drainage of swamps or marshlands
67 and drainage systems;

68 (8) To provide for the construction, maintenance and
69 covering over of watercourses;

70 (9) To control and administer the waterfront and
71 waterways of the municipality, and to acquire, establish,
72 construct, operate and maintain and regulate flood
73 control works, wharves and public landings, warehouses
74 and all adjuncts and facilities for navigation and
75 commerce and the utilization of the waterfront and
76 waterways and adjacent property;

77 (10) To prohibit the accumulation and require the
78 disposal of garbage, refuse, debris, wastes, ashes, trash
79 and other similar accumulations whether on private or
80 public property;

81 (11) To construct, establish, acquire, equip, maintain
82 and operate incinerator plants and equipment and all
83 other facilities for the efficient removal and destruction
84 of garbage, refuse, wastes, ashes, trash and other
85 similar matters;

86 (12) To regulate or prohibit the purchase or sale of
87 articles intended for human use or consumption which
88 are unfit for such use or consumption, or which may be
89 contaminated or otherwise unsanitary;

90 (13) To prevent injury or annoyance to the public or
91 individuals from anything dangerous, offensive or
92 unwholesome;

93 (14) To regulate the keeping of gunpowder and other
94 combustibles;

95 (15) To make regulations guarding against danger or
96 damage by fire;

97 (16) To arrest, convict and punish any individual for
98 carrying about his person any revolver or other pistol,
99 dirk, bowie knife, razor, slungshot, billy, metallic or
100 other false knuckles, or any other dangerous or other
101 deadly weapon of like kind or character;

102 (17) To arrest, convict and punish any person for
103 importing, printing, publishing, selling or distributing
104 any pornographic publications;

105 (18) To arrest, convict and punish any person for
106 keeping a house of ill fame, or for letting to another
107 person any house or other building for the purpose of
108 being used or kept as a house of ill fame, or for
109 knowingly permitting any house owned by him or under
110 his control to be kept or used as a house of ill fame, or
111 for loafing, boarding or loitering in a house of ill fame,
112 or frequenting same;

113 (19) To prevent and suppress conduct and practices
114 which are immoral, disorderly, lewd, obscene and
115 indecent;

116 (20) To prevent the illegal sale of intoxicating liquors,
117 drinks, mixtures and preparations;

118 (21) To arrest, convict and punish any individual for
119 driving or operating a motor vehicle while intoxicated
120 or under the influence of liquor, drugs or narcotics;

121 (22) To arrest, convict and punish any person for
122 gambling or keeping any gaming tables, commonly
123 called "A, B, C," or "E, O," table or faro bank or keno
124 table, or table of like kind, under any denomination,
125 whether the gaming table be played with cards, dice or
126 otherwise, or any person who shall be a partner or
127 concerned in interest, in keeping or exhibiting such

128 table or bank, or keeping or maintaining any gaming
129 house or place, or betting or gambling for money or
130 anything of value;

131 (23) To provide for the elimination of hazards to
132 public health and safety and to abate or cause to be
133 abated anything which in the opinion of a majority of
134 the governing body is a public nuisance;

135 (24) To license, or for good cause to refuse to license
136 in a particular case, or in its discretion to prohibit in
137 all cases, the operation of pool and billiard rooms and
138 the maintaining for hire of pool and billiard tables
139 notwithstanding the general law as to state licenses for
140 any such business and the provisions of section four,
141 article thirteen of this chapter; and when the municipi-
142 lity, in the exercise of its discretion, shall have refused
143 to grant a license to operate a pool or billiard room,
144 mandamus shall not lie to compel such municipality to
145 grant such license unless it shall clearly appear that the
146 refusal of the municipality to grant such license is
147 discriminatory or arbitrary; and in the event that the
148 municipality determines to license any such business,
149 the municipality shall have plenary power and author-
150 ity, and it shall be the duty of its governing body to
151 make and enforce reasonable ordinances regulating the
152 licensing and operation of such businesses;

153 (25) To protect places of divine worship and to
154 preserve peace and order in and about the premises
155 where held;

156 (26) To regulate or prohibit the keeping of animals or
157 fowls and to provide for the impounding, sale or
158 destruction of animals or fowls kept contrary to law or
159 found running at large;

160 (27) To arrest, convict and punish any person for
161 cruelly, unnecessarily or needlessly beating, torturing,
162 mutilating, killing or overloading or overdriving, or
163 willfully depriving of necessary sustenance, any domes-
164 tic animal;

165 (28) To provide for the regular building of houses or
166 other structures, for the making of division fences by the

167 owners of adjacent premises and for the drainage of lots
168 by proper drains and ditches;

169 (29) To provide for the protection and conservation of
170 shade or ornamental trees, whether on public or private
171 property, and for the removal of trees or limbs of trees
172 in a dangerous condition;

173 (30) To prohibit with or without zoning the location
174 of occupied house trailers or mobile homes in certain
175 residential areas;

176 (31) To regulate the location and placing of signs,
177 billboards, posters, and similar advertising;

178 (32) To erect, establish, construct, acquire, improve,
179 maintain and operate a gas system, a waterworks
180 system, an electric system, or sewer system and sewage
181 treatment and disposal system, or any combination of
182 the foregoing (subject to all of the pertinent provisions
183 of articles nineteen and twenty of this chapter and
184 particularly to the limitations or qualifications on the
185 right of eminent domain set forth in said articles
186 nineteen and twenty), within or without the corporate
187 limits of the municipality, except that the municipality
188 shall not erect any such system partly without the
189 corporate limits of the municipality to serve persons
190 already obtaining service from an existing system of the
191 character proposed, and where such system is by the
192 municipality erected, or has heretofore been so erected,
193 partly within and partly without the corporate limits of
194 the municipality, the municipality shall have the right
195 to lay and collect charges for service rendered to those
196 served within and those served without the corporate
197 limits of the municipality, and to prevent injury to such
198 system or the pollution of the water thereof and its
199 maintenance in a healthful condition for public use
200 within the corporate limits of the municipality;

201 (33) To acquire watersheds, water and riparian
202 rights, plant sites, rights-of-way and any and all other
203 property and appurtenances necessary, appropriate,
204 useful, convenient or incidental to any such system,
205 waterworks or sewage treatment and disposal works, as

206 aforesaid, subject to all of the pertinent provisions of
207 articles nineteen and twenty of this chapter;

208 (34) To establish, construct, acquire, maintain and
209 operate and regulate markets, and prescribe the time of
210 holding the same;

211 (35) To regulate and provide for the weighing of
212 articles sold or for sale;

213 (36) To establish, construct, acquire, maintain and
214 operate public buildings, municipal buildings or city
215 halls, auditoriums, arenas, jails, juvenile detention
216 centers or homes, motor vehicle parking lots, or any
217 other public works;

218 (37) To establish, construct, acquire, provide, equip,
219 maintain and operate recreational parks, playgrounds
220 and other recreational facilities for public use, and in
221 this connection also to proceed in accordance with the
222 provisions of article two, chapter ten of this code;

223 (38) To establish, construct, acquire, maintain and
224 operate a public library or museum or both for public
225 use;

226 (39) To provide for the appointment and financial
227 support of a library board in accordance with the
228 provisions of article one, chapter ten of this code;

229 (40) To establish and maintain a public health unit in
230 accordance with the provisions of section two, article
231 two, chapter sixteen of this code, which unit shall
232 exercise its powers and perform its duties subject to the
233 supervision and control of the West Virginia board of
234 health and state department of health;

235 (41) To establish, construct, acquire, maintain and
236 operate hospitals, sanitarium and dispensaries;

237 (42) To acquire, by purchase, condemnation or other-
238 wise, land within or near the corporate limits of the
239 municipality for providing and maintaining proper
240 places for the burial of the dead and to maintain and
241 operate the same and regulate interments therein upon
242 such terms and conditions as to price and otherwise as
243 may be determined by the governing body, and, in order

244 to carry into effect such authority the governing body
245 may acquire any cemetery or cemeteries already
246 established;

247 (43) To exercise general police jurisdiction over any
248 territory without the corporate limits owned by the
249 municipality or over which it has a right-of-way;

250 (44) To protect and promote the public morals, safety,
251 health, welfare and good order;

252 (45) To adopt rules for the transaction of business and
253 the government and regulation of its governing body;

254 (46) Except as otherwise provided, to require and
255 take such bonds from such officers, when deemed
256 necessary, payable to the municipality, in its corporate
257 name, with such sureties and in such penalty as the
258 governing body may see fit, conditioned upon the
259 faithful discharge of their duties;

260 (47) To require and take from such employees and
261 contractors such bonds in such penalty, with such
262 sureties and with such conditions, as the governing body
263 may see fit;

264 (48) To investigate and inquire into all matters of
265 concern to the municipality or its inhabitants;

266 (49) To establish, construct, require, maintain and
267 operate such instrumentalities, other than free public
268 schools, for the instruction, enlightenment, improve-
269 ment, entertainment, recreation and welfare of the
270 municipality's inhabitants as the governing body may
271 deem necessary or appropriate for the public interest;

272 (50) To create, maintain and operate a system for the
273 enumeration, identification and registration, or either,
274 of the inhabitants of the municipality and visitors
275 thereto, or such classes thereof as may be deemed
276 advisable;

277 (51) To appropriate and expend not exceeding twenty-
278 five cents per capita per annum for advertising the
279 municipality and the entertainment of visitors;

280 (52) To conduct programs to improve community

281 relations and public relations generally and to expend
282 municipal revenue for such purposes;

283 (53) To reimburse applicants for employment by the
284 municipality for travel and other reasonable and
285 necessary expenses actually incurred by such applicants
286 in traveling to and from such municipality to be
287 interviewed;

288 (54) To provide revenue for the municipality and
289 appropriate the same to its expenses;

290 (55) To create and maintain an employee benefits
291 fund, which shall not exceed one tenth of one percent
292 of the annual payroll budget for general employee
293 benefits and which shall be set up for the purpose of
294 stimulating and encouraging employees to develop and
295 implement cost-saving ideas and programs, and to
296 expend moneys from such fund for such purposes;

297 (56) To enter into reciprocal agreements with govern-
298 mental subdivisions or agencies of any state sharing a
299 common border for the protection of people and
300 property from fire and for emergency medical services
301 and for the reciprocal use of equipment and personnel
302 for such purposes; and

303 (57) To provide penalties for the offenses and viola-
304 tions of law mentioned in this section, subject to the
305 provisions of section one, article eleven of this chapter,
306 and such penalties shall not exceed any penalties
307 provided in this chapter and chapter sixty-one of this
308 code for like offenses and violations.

CHAPTER 42

(Com. Sub. for S. B. 1—By Senators Tucker, Mr. President, and Hawse)

[Passed April 5, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article three,
chapter seven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to
including volunteer fire departments and volunteer

ambulance services as eligible to receive county or district property.

Be it enacted by the Legislature of West Virginia:

That section three, article three, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. COUNTY PROPERTY.

§7-3-3. Sale of county or district property.

1 In all instances where the county commission of a
2 county is authorized by law to sell or dispose of any
3 property, either real or personal, belonging to the county
4 or held by it for the use of any district thereof, the same
5 shall be sold at public auction, at the front door of the
6 courthouse of the county, and such sale shall be
7 conducted by the president of the county commission,
8 but before making any such sale, notice of the time,
9 terms and place of sale, together with a brief description
10 of the property to be sold, shall be published as a Class
11 II legal advertisement in compliance with the provisions
12 of article three, chapter fifty-nine of this code, and the
13 publication area for such publication shall be the county:
14 *Provided*, That this section shall not apply to the sale
15 of any one item of property of less value than one
16 thousand dollars: *Provided, however*, That the provisions
17 of this section concerning sale at public auction shall not
18 apply to a county commission selling or disposing of its
19 property for a public use to the United States of
20 America, its instrumentalities, agencies or political
21 subdivisions or to the state of West Virginia, or its
22 political subdivisions, including county boards of
23 education, volunteer fire departments and volunteer
24 ambulance services, for an adequate consideration
25 without considering alone the present commercial or
26 market value of the property: *Provided further*, That all
27 real property conveyed or sold by a county commission
28 to a volunteer fire department or volunteer ambulance
29 service under this provision shall revert back to the
30 county commission if the volunteer fire department or
31 volunteer ambulance service ceases to use it for the
32 purpose for which the real property was conveyed or
33 sold.

CHAPTER 43

(H. B. 2043—By Delegates Phillips and Damron)

[Passed March 22, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three; and to amend article thirteen, chapter eight of said code by adding thereto a new section, designated section twenty-two-b, all relating to authorizing county and municipal treasurers to make direct deposits of salaries of employees to banks or other financial institutions when so authorized by the employees.

Be it enacted by the Legislature of West Virginia:

That article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-three; and that article thirteen, chapter eight of said code be amended by adding thereto a new section, designated section twenty-two-b, all to read as follows:

Chapter

7. County Commissions and Officers.
8. Municipal Corporations.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-23. Voluntary direct deposits by county treasurer of salaries of employees to banks or other financial institutions.

- 1 Any officer or employee of a county of West Virginia
- 2 may authorize that his net wages be deposited directly
- 3 to his account in any bank or other financial institution
- 4 within this state. The direct deposits may be authorized
- 5 on a form provided by the county. Upon execution of
- 6 such authorization and its receipt by the county
- 7 treasurer, the direct deposits shall be made in the

8 manner specified on the form and remitted to the
9 designated bank or other financial institution on or
10 before the day or days the officer or employee is due his
11 net wages. Direct deposit authorizations may be revoked
12 at any time thirty days prior to the date on which the
13 direct deposit is regularly made and on a form to be
14 provided by the county treasurer.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-22b. Voluntary direct deposits by municipal treasurer of salaries of employees to banks or other financial institutions.

1 Any officer or employee of a municipality of West
2 Virginia may authorize that his net wages be deposited
3 directly to his account in any bank or other financial
4 institution within this state. The direct deposits may be
5 authorized on a form provided by the municipality.
6 Upon execution of such authorization and its receipt by
7 the municipal treasurer, the direct deposits shall be
8 made in the manner specified on the form and remitted
9 to the designated bank or other financial institution on
10 or before the day or days the officer or employee is due
11 his net wages. Direct deposit authorizations may be
12 revoked at any time thirty days prior to the date on
13 which the direct deposit is regularly made and on a
14 form to be provided by the municipal treasurer.

CHAPTER 44

(H. B. 2287—By Delegate Love)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article ten, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment of deputy sheriffs or dog wardens as humane officers.

Be it enacted by the Legislature of West Virginia:

That section one, article ten, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. HUMANE OFFICERS.

§7-10-1. Deputy sheriffs as humane officers.

1 The sheriff of each county of this state shall annually
2 designate, by a record made in the office of the clerk
3 of the county commission, one of his deputies to
4 act as humane officer of such county: *Provided*, That, if
5 the county commission and sheriff agree, they may in
6 the alternative designate the county dog warden to act
7 as the humane officer; and it shall be the duty of the
8 person so designated to act as humane officer as well
9 as all peace officers as designated by law, to investigate
10 all complaints made to him of cruel or inhuman
11 treatment of animals within his county, and to person-
12 ally see that the law relating to the prevention of cruelty
13 to animals is enforced; and failure to investigate any
14 complaint made to him and to take proper measures in
15 such case or to perform his duty in any other respect
16 shall constitute good cause for removal from office.

CHAPTER 45

(H. B. 2432—By Delegates Seacrist and Ashcraft)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article eighteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to hotel occupancy tax; proceeds of tax, application of proceeds; and making historic sites an eligible purpose for expenditures.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article eighteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 18. HOTEL OCCUPANCY TAX.

§7-18-14. Proceeds of tax; application of proceeds.

1 (a) *Application of proceeds.*—The net proceeds of the
2 tax collected and remitted to the taxing authority
3 pursuant to this article shall be deposited into the
4 general revenue fund of such municipality or county
5 commission, and after appropriation thereof shall be
6 expended only as provided in subsections (b) and (c) of
7 this section.

8 (b) *Required expenditures.*—At least fifty percent of
9 the net revenue receivable during the fiscal year by a
10 county, or a municipality, pursuant to this article shall
11 be expended in the following manner for the promotion
12 of conventions and tourism:

13 (1) *Municipalities.*—If a convention and visitor's
14 bureau is located within the municipality, the governing
15 body of such municipality shall appropriate the percent-
16 age required by this subsection (b) to that bureau. If a
17 convention and visitor's bureau is not located within the
18 municipality, but such a bureau is located within the
19 county in which the municipality is located, then the
20 percentage appropriation required by this subsection (b)
21 shall be appropriated to such convention and visitor's
22 bureau located within such county. If a convention and
23 visitor's bureau is not located within such county, then
24 the percentage appropriation required by this subsec-
25 tion (b) shall be appropriated as follows:

26 (i) Any hotel located within such municipality may
27 apply to such municipality for an appropriation to such
28 hotel of a portion of the tax authorized by this article
29 and collected by such hotel and remitted to such
30 municipality, for uses directly related to the promotion
31 of tourism and travel, including advertising, salaries,
32 travel, office expenses, publications and similar ex-
33 penses. The portion of such tax allocable to such hotel
34 shall not exceed seventy-five percent of that portion of
35 such tax collected and remitted by such hotel which is
36 required to be expended pursuant to subsection (b) of
37 this section: *Provided*, That prior to appropriating any
38 moneys to such hotel such municipality shall require the

39 submission of, and give approval to, a budget setting
40 forth the proposed uses of such moneys.

41 (ii) The balance of net revenue required to be ex-
42 pended by subsection (b) of this section shall be
43 appropriated to the regional travel council serving the
44 area in which the municipality is located.

45 (2) *Counties.*—If a convention and visitor's bureau is
46 located within a county, the county commission shall
47 appropriate the percentage required by this subsection
48 (b) to that convention and visitor's bureau. If a conven-
49 tion and visitor's bureau is not located with in such
50 county, then the percentage appropriation required by
51 this subsection (b) shall be appropriated as follows:

52 (i) Any hotel located within such county may apply to
53 such county for an appropriation to such hotel of a
54 portion of the tax authorized by this article and collected
55 by such hotel and remitted to such county, for uses
56 directly related to the promotion of tourism and travel,
57 including advertising, salaries, travel, office expenses,
58 publications and similar expenses. The portion of such
59 tax allocable to such hotel shall not exceed seventy-five
60 percent of that portion of such tax collected and
61 remitted by such hotel which is required to be expended
62 pursuant to subsection (b) of this section: *Provided*, That
63 prior to appropriating any moneys to such hotel such
64 county shall require the submission of, and give
65 approval to, a budget setting forth the proposed uses of
66 such moneys.

67 (ii) The balance of net revenue required to be ex-
68 pended by subsection (b) of this section shall be
69 appropriated to the regional travel council serving the
70 area in which the county is located.

71 (3) *Legislative finding.*—The Legislature hereby finds
72 that the support of convention and visitor's bureaus,
73 hotels and regional travel councils is a public purpose
74 for which funds may be expended. Local convention and
75 visitor's bureaus, hotels and regional travel councils
76 receiving funds under this subsection (b) may expend
77 such funds for the payment of administrative expenses,
78 and for the direct or indirect promotion of conventions

79 and tourism, and for any other uses and purposes
80 authorized by subdivisions one and two of this subsection (b).
81

82 (c) *Permissible expenditures.*—After making the
83 appropriation required by subsection (b) of this section,
84 the remaining portion of the net revenues receivable
85 during the fiscal year by such county or municipality,
86 pursuant to this article, may be expended for one or
87 more of the purposes set forth in this subsection, but for
88 no other purpose. The purposes for which expenditures
89 may be made pursuant to this subsection are as follows:

90 (1) The planning, construction, reconstruction, estab-
91 lishment, acquisition, improvement, renovation, exten-
92 sion, enlargement, equipment, maintenance, repair and
93 operation of publicly owned convention facilities includ-
94 ing, but not limited to, arenas, auditoriums, civic centers
95 and convention centers;

96 (2) The payment of principal or interest or both on
97 revenue bonds issued to finance such convention
98 facilities;

99 (3) The promotion of conventions;

100 (4) The construction or maintenance of public parks,
101 tourist information centers and recreation facilities
102 (including land acquisition);

103 (5) The promotion of the arts; or

104 (6) Historic sites.

105 (d) *Definitions.*—For purposes of this section, the
106 following terms are defined:

107 (1) *Convention and visitor's bureau and visitor's and*
108 *convention bureau.*—"Convention and visitor's bureau"
109 and "visitor's and convention bureau" are interchange-
110 able, and either shall mean a nonstock, nonprofit
111 corporation with a full-time staff working exclusively to
112 promote tourism and to attract conventions, conferences
113 and visitors to the municipality or county in which such
114 convention and visitor's bureau or visitor's and conven-
115 tion bureau is located.

116 (2) *Convention center*.—"Convention center" means a
117 convention facility owned by the state, a county, a
118 municipality or other public entity or instrumentality
119 and shall include all facilities, including armories,
120 commercial, office, community service and parking
121 facilities, and publicly owned facilities constructed or
122 used for the accommodation and entertainment of
123 tourist and visitors, constructed in conjunction with the
124 convention center and forming reasonable appurtenan-
125 ces thereto.

126 (3) *Fiscal year*.—"Fiscal year" means the year begin-
127 ning July first and ending June thirtieth of the next
128 calendar year.

129 (4) *Net proceeds*.—"Net proceeds" means the gross
130 amount of tax collections less the amount of tax lawfully
131 refunded.

132 (5) *Promotion of the arts*.—"Promotion of the arts"
133 means activity to promote public appreciation and
134 interest in one or more of the arts. It includes the
135 promotion of music for all types, the dramatic arts,
136 dancing, painting and the creative arts through shows,
137 exhibits, festivals, concerts, musicals and plays.

138 (6) *Recreational facilities*.—"Recreational facilities"
139 means and includes any public park, parkway, play-
140 ground, public recreation center, athletic field, sports
141 arena, stadium, skating rink or arena, golf course,
142 tennis courts and other park and recreation facilities,
143 whether of a like or different nature, that are owned by
144 a county or municipality.

145 (7) *Regional travel council*.—"Regional travel council"
146 means a nonstock, nonprofit corporation, with a full-
147 time staff working exclusively to promote tourism and
148 to attract conventions, conferences and visitors to the
149 region of this state served by the regional travel council.

150 (8) *Historic site*.—"Historic site" means any site listed
151 on the United States national register of historic places,
152 or listed by a local historical landmarks commission,
153 established under state law, when such sites are owned
154 by a city, a county or a nonprofit historical association,
155 and are open from time to time to accommodate visitors.

CHAPTER 46

(Com. Sub. for H. B. 2089—By Delegates Manuel and Murphy)

[Passed March 20, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four hundred six, article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing mandatory period of incarceration prior to parole eligibility for distribution of certain controlled substances to persons under the age of eighteen by persons over the age of twenty-one and increasing mandatory period of incarceration prior to parole eligibility for distribution of certain controlled substances by persons eighteen or older in or on, or within one thousand feet of, the real property comprising an educational facility.

Be it enacted by the Legislature of West Virginia:

That section four hundred six, article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-406. Distribution to persons under the age of eighteen by persons over the age of twenty-one; distribution by persons eighteen or over in or on, or within one thousand feet of, school or college; increasing mandatory period of incarceration prior to parole eligibility.

1 (a) Notwithstanding any provision of this code, a
2 person convicted of a felony violation of the provisions
3 of section four hundred one of this article for distribu-
4 tion of a controlled substance who:

5 (1) Is twenty-one years of age or older at the time of
6 the distribution upon which the conviction is based, and
7 the person to whom the controlled substance was
8 distributed was under the age of eighteen years at the
9 time of the distribution; or

10 (2) Is eighteen years of age or older and the distribu-
11 tion upon which the conviction is based occurred in or
12 on, or within one thousand feet of, the real property
13 comprising a public or private elementary, vocational or
14 secondary school or a public or private college, junior
15 college or university in this state, shall, if sentenced to
16 the custody of the commissioner of corrections for
17 service of a sentence of incarceration, be ineligible for
18 parole for a period of two years.

19 (b) The existence of any fact which would make any
20 person subject to the provisions of this section shall not
21 be considered unless such fact is clearly stated and
22 included in the indictment or presentment by which
23 such person is charged and is either:

24 (1) Found by the court upon a plea of guilty or nolo
25 contendere;

26 (2) Found by the jury, if the matter be tried before
27 a jury, upon submission to the jury of a special
28 interrogatory for such purpose; or

29 (3) Found by the court, if the matter be tried by the
30 court without a jury.

31 (c) Nothing in this section shall be construed to limit
32 the sentencing alternatives made available to circuit
33 court judges under other provisions of this code.

CHAPTER 47

(Com. Sub. for S. B. 92—By Senators Warner, Boettner and J. Manchin)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-c, relating to computer crimes; defining offenses generally; penalties; venue; civil cause of action established; and general provisions.

Be it enacted by the Legislature of West Virginia:

That chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-c, to read as follows:

ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

- §61-3C-1. Short title.
- §61-3C-2. Legislative findings.
- §61-3C-3. Definitions.
- §61-3C-4. Computer fraud; penalties.
- §61-3C-5. Unauthorized access to computer services.
- §61-3C-6. Unauthorized possession of computer data or programs.
- §61-3C-7. Alteration, destruction, etc., of computer equipment.
- §61-3C-8. Disruption of computer services.
- §61-3C-9. Unauthorized possession of computer information, etc.
- §61-3C-10. Disclosure of computer security information.
- §61-3C-11. Obtaining confidential public information.
- §61-3C-12. Computer invasion of privacy.
- §61-3C-13. Fraud and related activity in connection with access devices.
- §61-3C-14. Endangering public safety.
- §61-3C-15. Computer as instrument of forgery.
- §61-3C-16. Civil relief; damages.
- §61-3C-17. Defenses to criminal prosecution.
- §61-3C-18. Venue.
- §61-3C-19. Prosecution under other criminal statutes not prohibited.
- §61-3C-20. Personal jurisdiction.
- §61-3C-21. Severability.

§§61-3C-1. Short title.

- 1 This act shall be known and may be cited as the "West
- 2 Virginia Computer Crime and Abuse Act."

§61-3C-2. Legislative findings.

- 1 The Legislature finds that:
- 2 (a) The computer and related industries play an
- 3 essential role in the commerce and welfare of this state.
- 4 (b) Computer-related crime is a growing problem in
- 5 business and government.
- 6 (c) Computer-related crime has a direct effect on state
- 7 commerce and can result in serious economic and, in
- 8 some cases, physical harm to the public.
- 9 (d) Because of the pervasiveness of computers in
- 10 today's society, opportunities are great for computer

11 related crimes through the introduction of false records
12 into a computer or computer system, the unauthorized
13 use of computers and computer facilities, the alteration
14 and destruction of computers, computer programs and
15 computer data, and the theft of computer resources,
16 computer software and computer data.

17 (e) Because computers have now become an integral
18 part of society, the Legislature recognizes the need to
19 protect the rights of owners and legitimate users of
20 computers and computer systems, as well as the privacy
21 interest of the general public, from those who abuse
22 computers and computer systems.

23 (f) While various forms of computer crime or abuse
24 might possibly be the subject of criminal charges or civil
25 suit based on other provisions of law, it is appropriate
26 and desirable that a supplemental and additional statute
27 be provided which specifically proscribes various forms
28 of computer crime and abuse and provides criminal
29 penalties and civil remedies therefor.

§61-3C-3. Definitions.

1 As used in this article, unless the context clearly
2 indicates otherwise:

3 (a) "Access" means to instruct, communicate with,
4 store data in, retrieve data from, intercept data from,
5 or otherwise make use of any computer, computer
6 network, computer program, computer software, com-
7 puter data or other computer resources.

8 (b) "Authorization" means the express or implied
9 consent given by a person to another to access or use said
10 person's computer, computer network, computer pro-
11 gram, computer software, computer system, password,
12 identifying code or personal identification number.

13 (c) "Computer" means an electronic, magnetic, opti-
14 cal, electrochemical, or other high speed data processing
15 device performing logical, arithmetic, or storage
16 functions, and includes any data storage facility or
17 communication facility directly related to or operating
18 in conjunction with such device. The term "computer"
19 includes any connected or directly related device,

20 equipment or facility which enables the computer to
21 store, retrieve or communicate computer programs,
22 computer data or the results of computer operations to
23 or from a person, another computer or another device,
24 but such term does not include an automated typewriter
25 or typesetter, a portable hand-held calculator or other
26 similar device.

27 (d) "Computer data" means any representation of
28 knowledge, facts, concepts, instruction, or other infor-
29 mation computed, classified, processed, transmitted,
30 received, retrieved, originated, stored, manifested,
31 measured, detected, recorded, reproduced, handled or
32 utilized by a computer, computer network, computer
33 program or computer software, and may be in any
34 medium, including, but not limited to, computer print-
35 outs, microfilm, microfiche, magnetic storage media,
36 optical storage media, punch paper tape or punch cards,
37 or it may be stored internally in read-only memory or
38 random access memory of a computer or any other
39 peripheral device.

40 (e) "Computer network" means a set of connected
41 devices and communication facilities, including more
42 than one computer, with the capability to transmit
43 computer data among them through such communica-
44 tion facilities.

45 (f) "Computer operations" means arithmetic, logical,
46 storage, display, monitoring or retrieval functions or
47 any combination thereof, and includes, but is not limited
48 to, communication with, storage of data in or to, or
49 retrieval of data from any device and the human manual
50 manipulation of electronic magnetic impulses. A
51 "computer operation" for a particular computer shall
52 also mean any function for which that computer was
53 designed.

54 (g) "Computer program" means an ordered set of
55 computer data representing instructions or statements,
56 in a form readable by a computer, which controls,
57 directs, or otherwise influences the functioning of a
58 computer or computer network.

59 (h) "Computer software" means a set of computer

60 programs, procedures and associated documentation
61 concerned with computer data or with the operation of
62 a computer, computer program, or computer network.

63 (i) "Computer services" means computer access time,
64 computer data processing, or computer data storage,
65 and the computer data processed or stored in connection
66 therewith.

67 (j) "Computer supplies" means punchcards, paper
68 tape, magnetic tape, magnetic disks or diskettes, optical
69 disks or diskettes, disk or diskette packs, paper,
70 microfilm, and any other tangible input, output or
71 storage medium used in connection with a computer,
72 computer network, computer data, computer software
73 or computer program.

74 (k) "Computer resources" includes, but is not limited
75 to, information retrieval; computer data processing,
76 transmission and storage; and any other functions
77 performed, in whole or in part, by the use of a computer,
78 computer network, computer software, or computer
79 program.

80 (l) "Owner" means any person who owns or leases or
81 is a licensee of a computer, computer network, computer
82 data, computer program, computer software, computer
83 resources or computer supplies.

84 (m) "Person" means any natural person, general
85 partnership, limited partnership, trust, association,
86 corporation, joint venture, or any state, county or
87 municipal government and any subdivision, branch,
88 department or agency thereof.

89 (n) "Property" includes:

90 (1) Real property;

91 (2) Computers and computer networks;

92 (3) Financial instruments, computer data, computer
93 programs, computer software and all other personal
94 property regardless of whether they are:

95 (i) Tangible or intangible;

96 (ii) In a format readable by humans or by a computer;

97 (iii) In transit between computers or within a compu-
98 ter network or between any devices which comprise a
99 computer; or

100 (iv) Located on any paper or in any device on which
101 it is stored by a computer or by a human; and

102 (4) Computer services.

103 (o) "Value" means having any potential to provide any
104 direct or indirect gain or advantage to any person.

105 (p) "Financial instrument" includes, but is not limited
106 to, any check, draft, warrant, money order, note,
107 certificate of deposit, letter of credit, bill of exchange,
108 credit or debit card, transaction authorization mecha-
109 nism, marketable security or any computerized repres-
110 entation thereof.

111 (q) "Value of property or computer services" shall be
112 (1) the market value of the property or computer
113 services at the time of a violation of this article; or (2)
114 if the property or computer services are unrecoverable,
115 damaged, or destroyed as a result of a violation of
116 section three or four of this article, the cost of reproduc-
117 ing or replacing the property or computer services at
118 the time of the violation.

§61-3C-4. Computer fraud; penalties.

1 Any person who, knowingly and willfully, directly or
2 indirectly, accesses or causes to be accessed any
3 computer, computer services or computer network for
4 the purpose of (1) executing any scheme or artifice to
5 defraud or (2) obtaining money, property or services by
6 means of fraudulent pretenses, representations or
7 promises shall be guilty of a felony, and, upon conviction
8 thereof, shall be fined not more than ten thousand
9 dollars or imprisoned in the penitentiary for not more
10 than ten years, or both.

§61-3C-5. Unauthorized access to computer services.

1 Any person who knowingly, willfully and without
2 authorization, directly or indirectly, accesses or causes
3 to be accessed a computer or computer network with the
4 intent to obtain computer services shall be guilty of a

- 5 misdemeanor, and, upon conviction thereof, shall be
6 fined not less than two hundred dollars nor more than
7 one thousand dollars or confined in the county jail not
8 more than one year, or both.

§61-3C-6. Unauthorized possession of computer data or programs.

- 1 (a) Any person who knowingly, willfully and without
2 authorization possesses any computer data or computer
3 program belonging to another and having a value of five
4 thousand dollars or more shall be guilty of a felony, and,
5 upon conviction thereof, shall be fined not more than ten
6 thousand dollars or imprisoned in the penitentiary for
7 not more than ten years, or both.
- 8 (b) Any person who knowingly, willfully and without
9 authorization possesses any computer data or computer
10 program belonging to another and having a value of less
11 than five thousand dollars shall be guilty of a misdemea-
12 nor, and, upon conviction thereof, shall be fined not
13 more than one thousand dollars or confined in the county
14 jail for not more than one year, or both.

§61-3C-7. Alteration, destruction, etc., of computer equipment.

- 1 Any person who knowingly, willfully and without
2 authorization, directly or indirectly, tampers with,
3 deletes, alters, damages or destroys or attempts to
4 tamper with, delete, alter, damage or destroy any
5 computer, computer network, computer software,
6 computer resources, computer program or computer
7 data shall be guilty of a felony, and, upon conviction
8 thereof, shall be fined not more than ten thousand
9 dollars or confined in the penitentiary not more than ten
10 years, or both, or, in the discretion of the court, be fined
11 not less than two hundred nor more than one thousand
12 dollars and confined in the county jail not more than one
13 year.

§61-3C-8. Disruption of computer services.

- 1 Any person who knowingly, willfully and without
2 authorization, directly or indirectly, disrupts or de-
3 grades or causes the disruption or degradation of

4 computer services or denies or causes the denial of
5 computer services to an authorized recipient or user of
6 such computer services, shall be guilty of a misdemeanor,
7 and, upon conviction thereof, shall be fined not less
8 than two hundred nor more than one thousand dollars
9 or confined in the county jail not more than one year,
10 or both.

§61-3C-9. Unauthorized possession of computer information, etc.

1 Any person who knowingly, willfully and without
2 authorization possesses any computer data, computer
3 software, computer supplies or a computer program
4 which he knows or reasonably should know was obtained
5 in violation of any section of this article shall be guilty
6 of a misdemeanor, and, upon conviction thereof, shall be
7 fined not less than two hundred nor more than one
8 thousand dollars or confined in the county jail for not
9 more than one year, or both.

§61-3C-10. Disclosure of computer security information.

1 Any person who knowingly, willfully and without
2 authorization discloses a password, identifying code,
3 personal identification number or other confidential
4 information about a computer security system to
5 another person shall be guilty of a misdemeanor, and,
6 upon conviction thereof, shall be fined not more than
7 five hundred dollars or confined in the county jail for
8 not more than six months, or both.

§61-3C-11. Obtaining confidential public information.

1 Any person who knowingly, willfully and without
2 authorization accesses or causes to be accessed any
3 computer or computer network and thereby obtains
4 information filed by any person with the state or any
5 county or municipality which is required by law to be
6 kept confidential shall be guilty of a misdemeanor, and,
7 upon conviction thereof, shall be fined not more than
8 five hundred dollars or confined in the county jail not
9 more than six months, or both.

§61-3C-12. Computer invasion of privacy.

1 Any person who knowingly, willfully and without
2 authorization accesses a computer or computer network
3 and examines any employment, salary, credit or any
4 other financial or personal information relating to any
5 other person, after the time at which the offender knows
6 or reasonably should know that he is without authori-
7 zation to view the information displayed, shall be guilty
8 of a misdemeanor, and, upon conviction thereof, shall be
9 fined not more than five hundred dollars or confined in
10 the county jail for not more than six months, or both.

§61-3C-13. Fraud and related activity in connection with access devices.

1 (a) As used in this section, the following terms shall
2 have the following meanings:

3 (1) "Access device" means any card, plate, code,
4 account number, or other means of account access that
5 can be used, alone or in conjunction with another access
6 device, to obtain money, goods, services, or any other
7 thing of value, or that can be used to initiate a transfer
8 of funds (other than a transfer originated solely by
9 paper instrument);

10 (2) "Counterfeit access device" means any access
11 device that is counterfeit, fictitious, altered, or forged,
12 or an identifiable component of an access device or a
13 counterfeit access device;

14 (3) "Unauthorized access device" means any access
15 device that is lost, stolen, expired, revoked, canceled, or
16 obtained without authority;

17 (4) "Produce" includes design, alter, authenticate,
18 duplicate, or assemble;

19 (5) "Traffic" means transfer, or otherwise dispose of,
20 to another, or obtain control of with intent to transfer
21 or dispose of.

22 (b) Any person who knowingly and willfully possesses
23 any counterfeit or unauthorized access device shall be
24 guilty of a misdemeanor, and, upon conviction thereof,
25 shall be fined not more than one thousand dollars or

26 confined in the county jail for not more than six months,
27 or both.

28 (c) Any person who knowingly, willfully and with
29 intent to defraud possesses a counterfeit or unauthorized
30 access device or who knowingly, willfully and with
31 intent to defraud, uses, produces or traffics in any
32 counterfeit or unauthorized access device shall be guilty
33 of a felony, and, upon conviction thereof, shall be fined
34 not more than ten thousand dollars or imprisoned in the
35 penitentiary not more than ten years, or both.

36 (d) This section shall not prohibit any lawfully
37 authorized investigative or protective activity of any
38 state, county or municipal law-enforcement agency.

§61-3C-14. Endangering public safety.

1 Any person who accesses a computer or computer
2 network and knowingly, willfully and without authori-
3 zation (a) interrupts or impairs the providing of services
4 by any private or public utility; (b) interrupts or impairs
5 the providing of any medical services; (c) interrupts or
6 impairs the providing of services by any state, county
7 or local government agency, public carrier or public
8 communication service; or otherwise endangers public
9 safety shall be guilty of a felony, and, upon conviction
10 thereof, shall be fined not more than fifty thousand
11 dollars or imprisoned not more than twenty years, or
12 both.

§61-3C-15. Computer as instrument of forgery.

1 The creation, alteration or deletion of any computer
2 data contained in any computer or computer network,
3 which if done on a tangible document or instrument
4 would constitute forgery under section five, article four,
5 chapter sixty-one of this code will also be deemed to be
6 forgery. The absence of a tangible writing directly
7 created or altered by the offender shall not be a defense
8 to any crime set forth in section five, article four,
9 chapter sixty-one if a creation, alteration or deletion of
10 computer data was involved in lieu of a tangible
11 document or instrument.

§61-3C-16. Civil relief; damages.

1 (a) Any person whose property or person is injured by
2 reason of a violation of any provision of this article may
3 sue therefor in circuit court and may be entitled to
4 recover for each violation:

5 (1) Compensatory damages;

6 (2) Punitive damages; and

7 (3) Such other relief, including injunctive relief, as
8 the court may deem appropriate.

9 Without limiting the generality of the term, "dam-
10 ages" shall include loss of profits.

11 (b) At the request of any party to an action brought
12 pursuant to this section, the court may, in its discretion,
13 conduct all legal proceedings in such a manner as to
14 protect the secrecy and security of the computer
15 network, computer data, computer program or compu-
16 ter software involved in order to prevent any possible
17 recurrence of the same or a similar act by another
18 person or to protect any trade secret or confidential
19 information of any person. For the purposes of this
20 section "trade secret" means the whole or any portion
21 or phase of any scientific or technological information,
22 design, process, procedure or formula or improvement
23 which is secret and of value. A trade secret shall be
24 presumed to be secret when the owner thereof takes
25 measures to prevent it from becoming available to
26 persons other than those authorized by the owner to
27 have access thereto for a limited purpose.

28 (c) The provisions of this section shall not be
29 construed to limit any person's right to pursue any
30 additional civil remedy otherwise allowed by law.

31 (d) A civil action under this section must be com-
32 menced before the earlier of: (1) five years after the last
33 act in the course of conduct constituting a violation of
34 this article; or (2) two years after the plaintiff discovers
35 or reasonably should have discovered the last act in the
36 course of conduct constituting a violation of this article.

§61-3C-17. Defenses to criminal prosecution.

1 (a) In any criminal prosecution under this article, it
2 shall be a defense that:

3 (1) The defendant had reasonable grounds to believe
4 that he had authority to access or could not have
5 reasonably known he did not have authority to access the
6 computer, computer network, computer data, computer
7 program or computer software in question; or,

8 (2) The defendant had reasonable grounds to believe
9 that he had the right to alter or destroy the computer
10 data, computer software or computer program in
11 question; or,

12 (3) The defendant had reasonable grounds to believe
13 that he had the right to copy, reproduce, duplicate or
14 disclose the computer data, computer program, compu-
15 ter security system information or computer software in
16 question.

17 (b) Nothing in this section shall be construed to limit
18 any defense available to a person charged with a
19 violation of this article.

§61-3C-18. Venue.

1 For the purpose of criminal and civil venue under this
2 article, any violation of this article shall be considered
3 to have been committed:

4 (1) In any county in which any act was performed in
5 furtherance of any course of conduct which violates this
6 article;

7 (2) In the county of the principal place of business in
8 this state of the aggrieved owner of the computer,
9 computer data, computer program, computer software
10 or computer network, or any part thereof;

11 (3) In any county in which any violator had control or
12 possession of any proceeds of the violation or any books,
13 records, documentation, property, financial instrument,
14 computer data, computer software, computer program,
15 or other material or objects which were used in
16 furtherance of or obtained as a result of the violation;

17 (4) In any county from which, to which, or through
18 which any access to a computer or computer network
19 was made, whether by wires, electromagnetic waves,
20 microwaves or any other means of communication; and

21 (5) In the county in which the aggrieved owner or the
22 defendant resides or either of them maintains a place
23 of business.

§61-3C-19. Prosecution under other criminal statutes not prohibited.

1 Criminal prosecution pursuant to this article shall not
2 prevent prosecution pursuant to any other provision of
3 law.

§61-3C-20. Personal jurisdiction.

1 Any person who violates any provision of this article
2 and, in doing so, accesses, permits access to, causes
3 access to or attempts to access a computer, computer
4 network, computer data, computer resources, computer
5 software or computer program which is located, in
6 whole or in part, within this state, or passes through this
7 state in transit, shall be subject to criminal prosecution
8 and punishment in this state and to the civil jurisdiction
9 of the courts of this state.

§61-3C-21. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held invalid,
3 such invalidity shall not affect any other provisions or
4 applications of this article which can be given effect
5 without the invalid provision or application, and to that
6 end the provisions of this article are declared to be
7 severable.

CHAPTER 48

(S. B. 624—Originating in the Committee on the Judiciary)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article seven, chapter sixty-

one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to deadly weapons generally, defining certain terms; carrying deadly weapon without license or other authorization, penalties; license to carry deadly weapons, how obtained; revocation of license; exceptions as to prohibitions against carrying concealed deadly weapons; persons prohibited from possession of deadly weapons, penalties; possession of deadly weapons by minors, minor may be adjudged delinquent; possession of machine guns or automatic weapons, penalties; display of deadly weapons for sale or hire, sale to prohibited persons, penalties; brandishing or exposing deadly weapons, threatening or causing breach of the peace, penalties; exposing or brandishing firearm or deadly weapon on premises of school or court of law, penalties; negligent shooting, wounding or killing of human being or livestock while hunting, penalties; shooting across road or near building or crowd, penalties; right of certain persons to limit possession of firearms on premises; refusing to temporarily relinquish firearm or deadly weapon or to leave premises, penalties; and prohibition on possessing or carrying firearm or other deadly weapon on school premises.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

- §61-7-1. Legislative findings.
- §61-7-2. Definitions.
- §61-7-3. Carrying deadly weapon without license or other authorization; penalties.
- §61-7-4. License to carry deadly weapons; how obtained.
- §61-7-5. Revocation of license.
- §61-7-6. Exceptions as to prohibitions against carrying concealed deadly weapons.
- §61-7-7. Persons prohibited from possession of deadly weapons.
- §61-7-8. Possession of deadly weapons by minors; prohibition.
- §61-7-9. Possession of machine guns, penalties.
- §61-7-10. Display of deadly weapons for sale or hire; sale to prohibited persons; penalties.

§61-7-11. Brandishing deadly weapons; threatening or causing breach of the peace; brandishing deadly weapons on premises of educational facility or court; penalties.

§61-7-12. Negligent shooting, wounding or killing of human being or livestock while hunting; penalty.

§61-7-13. Shooting across road or near building or crowd; penalty.

§61-7-14. Right of certain persons to limit possession of firearms on premises.

§61-7-1. Legislative findings.

1 The Legislature finds that the overwhelming support
2 of the citizens of West Virginia for article three, section
3 twenty-two of the constitution of this state, commonly
4 known as the "Right to Keep and Bear Arms Amend-
5 ment", combined with the obligation of the state to
6 reasonably regulate the right of persons to keep and
7 bear arms for self-defense requires the reenactment of
8 this article.

§61-7-2. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

3 (1) "Blackjack" means a short bludgeon consisting, at
4 the striking end, of an encased piece of lead or some
5 other heavy substance and, at the handle end, a strap
6 or springy shaft which increases the force of impact
7 when a person or object is struck. The term "blackjack"
8 shall include, but not be limited to, a billy, billy club,
9 sand club, sandbag or slapjack.

10 (2) "Gravity knife" means any knife that has a blade
11 released from the handle by the force of gravity or the
12 application of centrifugal force, and when so released is
13 locked in place by means of a button, spring, lever, or
14 other locking or catching device.

15 (3) "Knife" means an instrument, intended to be used
16 or readily adaptable to be used as a weapon, consisting
17 of a sharp-edged or sharp-pointed blade, usually made
18 of steel, attached to a handle, which is capable of
19 inflicting cutting, stabbing or tearing wounds. The term
20 "knife" shall include, but not be limited to, any dagger,
21 dirk, poniard or stiletto with a blade over three and one-
22 half inches in length, any switchblade knife or gravity
23 knife, and any other instrument capable of inflicting
24 cutting, stabbing, or tearing wounds. A pocket knife

25 with a blade three and one-half inches or less in length,
26 a hunting or fishing knife carried for hunting, fishing,
27 sports or other recreational uses, or a knife designed for
28 use as a tool or household implement shall not be
29 included within the term "knife" as defined herein,
30 unless such knife is knowingly used or intended to be
31 used to produce serious bodily injury or death.

32 (4) "Switchblade knife" means any knife having a
33 spring-operated blade which opens automatically upon
34 pressure being applied to a button, catch or other
35 releasing device in its handle.

36 (5) "Nunchuka" means a flailing instrument consist-
37 ing of two or more rigid parts, connected by a chain,
38 cable, rope or other nonrigid, flexible or springy
39 material, constructed in such a manner as to allow the
40 rigid parts to swing freely, so that one rigid part may
41 be used as a handle and the other rigid part may be used
42 as the striking end.

43 (6) "Metallic or false knuckles" means a set of finger
44 rings attached to a transverse piece, to be worn over the
45 front of the hand for use as a weapon, and constructed
46 in such a manner that, when striking another person
47 with the fist or closed hand, considerable physical
48 damage may be inflicted upon the person struck. The
49 terms "metallic or false knuckles" shall include any such
50 instrument, without reference to the metal or other
51 substance or substances from which the metallic or false
52 knuckles are made.

53 (7) "Pistol" means a short firearm having a chamber
54 which is integral with the barrel, designed to be aimed
55 and fired by the use of a single hand.

56 (8) "Revolver" means a short firearm having a
57 cylinder of several chambers that are brought succes-
58 sively into line with the barrel to be discharged,
59 designed to be aimed and fired by the use of a single
60 hand.

61 (9) "Deadly weapon" means an instrument which is
62 designed to be used to produce serious bodily injury or
63 death, or is readily adaptable to such use. The term

64 "deadly weapon" shall include, but not be limited to, the
65 instruments defined in subdivisions (1) through (8) of
66 this section, or other deadly weapons of like kind or
67 character which may be easily concealed on or about the
68 person.

69 (10) "Concealed" means hidden from ordinary obser-
70 vation so as to prevent disclosure or recognition. A
71 deadly weapon is concealed when it is carried on or
72 about the person in such a manner that another person
73 in the ordinary course of events would not be placed on
74 notice that the deadly weapon was being carried.

75 (11) "Firearm" means any weapon which will expel a
76 projectile by action of an explosion.

77 (12) "Controlled substance" shall have the same
78 meaning as is ascribed to that term in subsection (d),
79 section one hundred one, article one, chapter sixty-a of
80 this code.

81 (13) "Drug" shall have the same meaning as is
82 ascribed to that term in subsection (l), section one
83 hundred one, article one, chapter sixty-a of this code.

**§61-7-3. Carrying deadly weapon without license or other
authorization; penalties.**

1 (a) Any person who carries a concealed deadly
2 weapon, without a state license or other lawful author-
3 ization established under the provisions of this code,
4 shall be guilty of a misdemeanor, and, upon conviction
5 thereof, shall be fined not less than one hundred dollars
6 nor more than one thousand dollars and may be
7 imprisoned in the county jail for not more than twelve
8 months for the first offense; but upon conviction of a
9 second or subsequent offense, he or she shall be guilty
10 of a felony, and, upon conviction thereof, shall be
11 imprisoned in the penitentiary not less than one nor
12 more than five years and fined not less than one
13 thousand dollars nor more than five thousand dollars.

14 (b) It shall be the duty of the prosecuting attorney in
15 all cases to ascertain whether or not the charge made
16 by the grand jury is a first offense or is a second or
17 subsequent offense and, if it shall be a second or

18 subsequent offense, it shall be so stated in the indict-
19 ment returned, and the prosecuting attorney shall
20 introduce the record evidence before the trial court of
21 such second or subsequent offense and shall not be
22 permitted to use discretion in introducing evidence to
23 prove the same on the trial.

§61-7-4. License to carry deadly weapons; how obtained.

1 (a) Any person desiring to obtain a state license to
2 carry a concealed deadly weapon shall apply to the
3 circuit court of his or her county for such license, and
4 shall pay to the clerk of the circuit court, at the time
5 of application, a filing fee of twenty dollars. The
6 applicant shall file with the clerk of the circuit court an
7 application in writing, duly verified, which sets forth
8 the following:

9 (1) That the applicant is a citizen of the United States
10 of America or lawfully resides in the United States of
11 America;

12 (2) That, on the date the application is made, the
13 applicant is a bona fide resident of this state and of the
14 county in which the application is made;

15 (3) That the applicant is eighteen years of age or
16 older;

17 (4) That the applicant is not addicted to alcohol, a
18 controlled substance or a drug, and is not an unlawful
19 user thereof;

20 (5) That the applicant has not been convicted of a
21 felony or of an act of violence involving the misuse of
22 such deadly weapon;

23 (6) That the applicant desires to carry such deadly
24 weapon for the defense of self, family, home or state, or
25 other lawful purpose;

26 (7) That the applicant is physically and mentally
27 competent to carry such weapon;

28 (8) That, in the case of a person applying for a license
29 to carry a concealed pistol or revolver, the applicant has
30 qualified under minimum requirements for handling

31 and firing such firearms. These minimum requirements
32 are those promulgated by the department of natural
33 resources and attained under the auspices of the
34 department of natural resources: *Provided*, That the
35 court shall waive this requirement in the case of a
36 renewal applicant who has previously qualified: *Pro-*
37 *vided, however*, That the following may be substituted
38 for those minimum requirements promulgated by the
39 department of natural resources:

40 (A) Successful completion of any official national rifle
41 association firearms safety or training course;

42 (B) Successful completion of any firearms safety or
43 training course or class available to the general public
44 offered by an official law-enforcement organization,
45 community college, junior college, college, or private or
46 public institution or organization or firearms training
47 school, utilizing instructors currently certified by the
48 national rifle association;

49 (C) Successful completion of any firearms training or
50 safety course or class conducted by a firearms instructor
51 certified as such by the state or by the national rifle
52 association.

53 A photocopy of a certificate of completion of any of
54 the courses or classes or an affidavit from the instructor,
55 school, club, organization, or group that conducted or
56 taught said course or class attesting to the successful
57 completion of the course or class by the applicant or a
58 copy of any document which shows successful comple-
59 tion of the course or class, shall constitute evidence of
60 qualification under this section.

61 (b) The court shall issue or deny such license within
62 thirty days after the application is filed with the circuit
63 clerk. The court shall, if necessary, hear evidence upon
64 all matters stated in such application and upon any
65 other matter related to the eligibility of the applicant
66 under subsection (a) of this section. If from such
67 application or the proof it appears that the purpose for
68 such person to carry such weapon is defense of self,
69 family, home or state, or other lawful purpose, and all
70 other conditions in subsection (a) are complied with, the

71 court, or the judge thereof in vacation, shall grant such
72 license.

73 (c) In the event an application is denied, the specific
74 reasons for the denial shall be stated in the order of the
75 court denying the application. Upon denial of an
76 application and at the request of the applicant made
77 within ten days of such denial, the court shall schedule
78 the matter for a hearing. The applicant may be
79 represented by counsel, but in no case shall the court
80 be required to appoint counsel for an applicant. The
81 final order of the court shall include the court's findings
82 of fact and conclusions of law.

83 (d) If an application is approved, the court shall
84 require in its order granting the license that before any
85 license shall be issued or become effective, the applicant
86 shall pay to the sheriff a license fee in the amount of
87 fifty dollars. Any such license shall be valid for five
88 years, unless sooner revoked.

89 (e) All license fees collected hereunder shall be paid
90 by the sheriff and accounted for to the auditor as other
91 license taxes are collected and paid, and the state tax
92 commissioner shall prepare all suitable forms for
93 licenses and certificates showing that such license has
94 been granted and shall do any other act required to be
95 done to protect the state and see to the enforcement of
96 this section.

97 (f) The clerk of the circuit court shall, immediately
98 after the license is granted as aforesaid, furnish the
99 superintendent of the department of public safety a
100 certified copy of the order of the court granting such
101 license, for which service the clerk shall be paid a fee
102 of two dollars which shall be taxed as costs in the
103 proceeding. It shall be the duty of the clerk of each
104 circuit court to furnish to the superintendent of the
105 department of public safety, at any time so requested,
106 a certified list of all such licenses issued in the county.

107 (g) No person who is engaged in the receipt, review,
108 or in the issuance of such license shall incur any civil
109 liability as the result of the lawful performance of his
110 or her duties under this article.

§61-7-5. Revocation of license.

1 A license to carry a deadly weapon shall be deemed
2 revoked at such time as the person licensed becomes
3 unable to meet the criteria for initial licensure set forth
4 in section four of this article. Any person licensed under
5 the provisions of this article shall immediately sur-
6 render his or her license to the circuit court upon
7 becoming ineligible for continued licensure.

§61-7-6. Exceptions as to prohibitions against carrying concealed deadly weapons.

1 The licensure provisions set forth in this article shall
2 not apply to:

3 (1) Any person carrying a deadly weapon upon his
4 own premises; nor shall anything herein prevent a
5 person from carrying any firearm, unloaded, from the
6 place of purchase to his or her home, residence or place
7 of business or to a place of repair and back to his or
8 her home, residence or place of business, nor shall
9 anything herein prohibit a person from possessing a
10 firearm while hunting in a lawful manner or while
11 traveling from his or her home, residence or place of
12 business to a hunting site, and returning to his or her
13 home, residence or place of business;

14 (2) Any person who is a member of a properly
15 organized target-shooting club authorized by law to
16 obtain firearms by purchase or requisition from this
17 state, or from the United States for the purpose of target
18 practice, from carrying any pistol, as defined in this
19 article, unloaded, from his home, residence or place of
20 business to a place of target practice, and from any such
21 place of target practice back to his home, residence or
22 place of business, for using any such weapon at such
23 place of target practice in training and improving his
24 skill in the use of such weapons;

25 (3) Any law-enforcement officer or law-enforcement
26 official as such are defined in section one, article twenty-
27 nine, chapter thirty of this code;

28 (4) Any employee of the West Virginia department of
29 corrections duly appointed pursuant to the provisions of

30 section five, article five, chapter twenty-eight of this
31 code while such employee is on duty;

32 (5) Any member of the armed forces of the United
33 States or the militia of this state while such member is
34 on duty;

35 (6) Any circuit judge, prosecuting attorney, assistant
36 prosecuting attorney or a duly appointed investigator
37 employed by a prosecuting attorney.

§61-7-7. Persons prohibited from possession of deadly weapons.

1 Notwithstanding any provision of this code to the
2 contrary, no person who: (1) Has been convicted of a
3 felony in this state or in any other jurisdiction; (2) has
4 been discharged under less than honorable conditions
5 from the armed forces of the United States; (3) has been
6 adjudicated as a mental incompetent or has been
7 committed involuntarily to a mental institution; (4) is an
8 alien illegally or unlawfully in the United States; or (5)
9 is addicted to alcohol, a controlled substance or a drug,
10 or is an unlawful user thereof shall have in his or her
11 possession any firearm or other deadly weapon:
12 *Provided*, That any person prohibited from possessing a
13 firearm or other deadly weapon by the provisions of this
14 section may petition the circuit court of the county in
15 which he or she resides and if the court finds by clear
16 and convincing evidence that such person is competent
17 and capable of exercising the responsibility concomitant
18 with the possession of a firearm or other deadly weapon
19 the court may enter an order allowing such person to
20 possess such weapon if such would not violate any
21 federal statute.

22 Any person who violates the provisions of this section
23 shall be guilty of a misdemeanor, and, upon conviction
24 thereof, shall be fined not less than one hundred dollars
25 nor more than one thousand dollars or confined in the
26 county jail for not less than ninety days nor more than
27 one year, or both.

§61-7-8. Possession of deadly weapons by minors; prohibitions.

1 Notwithstanding any other provision of this article to

2 the contrary, a person under the age of eighteen years
3 who is not married or otherwise emancipated shall not
4 possess or carry concealed or openly any deadly weapon:
5 *Provided*, That a minor may possess a firearm upon
6 premises owned by said minor or his family or on the
7 premises of another with the permission of his or her
8 parent or guardian and in the case of property other
9 than his or her own or that of his family, with the
10 permission of the owner or lessee of such property:
11 *Provided, however*, That nothing in this section shall
12 prohibit a minor from possessing a firearm while
13 hunting in a lawful manner or while traveling from a
14 place where he or she may lawfully possess a deadly
15 weapon, to a hunting site, and returning to a place
16 where he or she may lawfully possess such weapon.

17 A violation of this section by a person under the age
18 of eighteen years shall subject the child to the jurisdic-
19 tion of the circuit court under the provisions of article
20 five, chapter forty-nine of this code, and such minor may
21 be proceeded against in the same manner as if he or she
22 had committed an act which if committed by an adult
23 would be a crime, and may be adjudicated delinquent.

§61-7-9. Possession of machine guns; penalties.

1 It shall be unlawful for any person to carry, transport,
2 or have in his possession, any machine gun, submachine
3 gun, or any other fully automatic weapon unless he or
4 she has fully complied with applicable federal statutes
5 and all applicable rules and regulations of the secretary
6 of the treasury of the United States relating to such
7 firearms.

8 Any person who violates the provision of this section
9 shall be guilty of a misdemeanor, and, upon conviction
10 thereof, shall be fined not less than one thousand dollars
11 nor more than five thousand dollars, or shall be confined
12 in the county jail for not less than ninety days, nor more
13 than one year, or both.

§61-7-10. Display of deadly weapons for sale or hire; sale to prohibited persons; penalties.

1 (a) It shall be unlawful for any person to publicly

2 display and offer for rent or sale, to passersby on any
3 street, road or alley, any deadly weapon, machine gun,
4 submachine gun or other fully automatic weapon, any
5 rifle, shotgun or ammunition for same.

6 (b) It shall be unlawful for any person to knowingly
7 sell, rent, give or lend any of the arms mentioned in this
8 article to a person prohibited from possessing same by
9 any provision of this article.

10 (c) Any person, partnership, corporation or firm
11 violating the provisions of this section shall be guilty of
12 a misdemeanor, and, upon conviction thereof, shall be
13 fined not less than five hundred dollars nor more than
14 five thousand dollars or shall be confined in the county
15 jail for not more than one year, or both.

**§61-7-11. Brandishing deadly weapons; threatening or
causing breach of the peace; brandishing
deadly weapons on premises of educational
facility or court; penalties.**

1 (a) It shall be unlawful for any person armed with a
2 firearm or other deadly weapon, whether licensed to
3 carry the same or not, to carry, brandish, or use such
4 weapon in a way or manner to cause, or threaten, a
5 breach of the peace. Any person violating this subsection
6 shall be guilty of a misdemeanor, and, upon conviction
7 thereof, shall be fined not less than fifty nor more than
8 one thousand dollars, or shall be confined in the county
9 jail not less than ninety days nor more than one year,
10 or both.

11 (b) It shall be unlawful for any person armed with a
12 firearm or deadly weapon, except for law-enforcement
13 officers on duty, to expose, brandish, unholster or hold
14 such firearm in his or her hand or expose, brandish or
15 hold such deadly weapon in his or her hand (1) on the
16 premises of any primary or secondary educational
17 facility in this state, except for valid educational
18 purposes by faculty or by individuals invited by faculty;
19 or (2) on any premises housing a court of law. Any
20 person violating this subsection shall be guilty of a
21 misdemeanor, and, upon conviction thereof, shall be
22 fined not less than two hundred dollars nor more than

23 one thousand dollars, or confined in the county jail not
24 less than six months nor more than one year, or both.

§61-7-12. Negligent shooting, wounding or killing of human being or livestock while hunting; penalty.

1 It shall be unlawful for any person, while engaged in
2 hunting or pursuing game animals, game birds or game
3 fowl, carelessly or negligently to shoot, wound or kill any
4 human being, or any livestock, or destroy or injure any
5 other chattels or property, and any person violating this
6 section shall be guilty of a misdemeanor, and, upon
7 conviction thereof, shall be fined not less than one
8 thousand dollars nor more than ten thousand dollars, or
9 shall be confined in the county jail for a period not
10 exceeding one year, or both.

§61-7-13. Shooting across road or near building or crowd; penalty.

1 (a) It shall be unlawful for any person to shoot or
2 discharge any firearm across or in any public road in
3 this state, at any time, or within four hundred feet of
4 any schoolhouse or church, or within five hundred feet
5 of any dwelling house by any person other than the
6 owner and his or her family or guests, or on or near any
7 park or other place where persons gather for purposes
8 of pleasure, and any person violating this section shall
9 be guilty of a misdemeanor, and, upon conviction
10 thereof, shall be fined not less than one hundred dollars
11 nor more than five hundred dollars, or shall be imprisoned in the county jail not more than one hundred days.

13 (b) Any person operating a gun repair shop, licensed
14 to do business in the state of West Virginia and duly
15 licensed under applicable federal statutes, is exempt
16 from the prohibition established by this section and
17 section fifty-eight, article two, chapter twenty of this
18 code for the purpose of test-firing firearms.

§61-7-14. Right of certain persons to limit possession of firearms on premises.

1 Notwithstanding the provisions of this article, any
2 owner, lessee or other person charged with the care,

3 custody and control of real property may prohibit the
4 carrying openly or concealed of any firearm or deadly
5 weapon on property under his or her domain: *Provided,*
6 That for purposes of this section "person" means an
7 individual or any entity which may acquire title to real
8 property.

9 Any person carrying or possessing a firearm or other
10 deadly weapon on the property of another who refuses
11 to temporarily relinquish possession of such firearm or
12 other deadly weapon, upon being requested to do so, or
13 to leave such premises, while in possession of such
14 firearm or other deadly weapon, shall be guilty of a
15 misdemeanor, and, upon conviction thereof, shall be
16 fined not more than one thousand dollars or confined in
17 the county jail not more than six months, or both:
18 *Provided,* That the provisions of this section shall not
19 apply to those persons set forth in subsections (3)
20 through (6), section six of this code while such persons
21 are acting in an official capacity: *Provided, however,*
22 That under no circumstances may any person possess or
23 carry or cause the possession or carrying of any firearm
24 or other deadly weapon on the premises of any primary
25 or secondary educational facility in this state unless such
26 person is a law-enforcement officer or he or she has the
27 express written permission of the county school super-
28 intendent.

CHAPTER 49

(Com. Sub. for H. B. 2010—By Mr. Speaker, Mr. Chambers, and Delegate Hatcher)

[Passed March 2, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen-a, article one-c, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the court to make conditions of bond concerning contact with the victim as necessary to protect the victim.

Be it enacted by the Legislature of West Virginia:

That section seventeen-a, article one-c, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1C. BAIL.

§62-1C-17a. Bail in situations of alleged child abuse and alleged sexual offenses.

1 When the offense charged is an assault or other
2 offense against a child who is defined in chapter forty-
3 nine of this code, it may be a condition of bond that the
4 defendant shall not live in the same residence as the
5 victim of the alleged offense, and the court may make
6 such other conditions of bond with respect to contact
7 with the victim as it deems necessary under the
8 circumstances to protect the child.

9 In cases where the charge is a sexual offense, as
10 defined in chapter sixty-one of this code, against any
11 person, the court, upon a showing of cause, may make
12 such conditions of bond on the defendant or on any
13 witness bond issued under section fifteen of this article
14 as it deems necessary with respect to contact with the
15 victim.

CHAPTER 50

(Com. Sub. for H. B. 2036—By Delegates Farley and Murensky)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven-a, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to criminal penalties for failing to return to confinement in jails while on release for work or other purposes.

Be it enacted by the Legislature of West Virginia:

That article eleven-a, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four, to read as follows:

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.**§62-11A-4. Violations; penalties.**

1 (a) Any person lawfully confined in jail on conviction

2 of one or more felonies, or on conviction of one or more
3 felonies and one or more misdemeanors, who has been
4 granted release for work or other purposes under section
5 one-a of this article, and who fails to return to jail at
6 the times designated in the release order with the intent
7 to evade lawful detention, shall be guilty of an additional
8 felony, and, upon conviction, may be confined in the
9 penitentiary for not less than one nor more than five
10 years.

11 (b) Any person lawfully confined in jail on conviction
12 of one or more misdemeanors, who has been granted
13 release for work or other purposes under section one-a
14 of this article, and who fails to return to jail at the times
15 designated in the release order with the intent to evade
16 lawful detention, shall be guilty of a misdemeanor, and,
17 upon conviction, may be confined in jail for up to one
18 year.

CHAPTER 51

(S. B. 564—By Senator Lucht)

[Passed April 5, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three; to amend and reenact section five, article ten, chapter seven of said code; and to amend and reenact section nineteen-a, article eight, chapter sixty-one of said code, all relating to removal of dog or cat from owner charged with cruelty; relating to the sale of impounded dogs or cats only for adoption as pets; sale or transfer of dogs or cats prohibited to any person or entity for use in education or scientific activities; humane disposition of dogs and cats; and effective date.

Be it enacted by the Legislature of West Virginia:

That article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated

section twenty-three; that section five, article ten, chapter seven of said code be amended and reenacted; and that section nineteen-a, article eight, chapter sixty-one of said code be amended and reenacted, all to read as follows:

Chapter

- 7. County Commissions and Officers.**
- 19. Agriculture.**
- 61. Crimes and Their Punishment.**

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 10. HUMANE OFFICERS.

§7-10-5. Destruction of animals.

- 1 Any such officer may lawfully destroy or cause to be
- 2 destroyed any animal in his charge, when in the
- 3 judgment of such humane officer, and by the written
- 4 certificate of a regularly licensed veterinary surgeon,
- 5 such animal appears to be injured, disabled, diseased
- 6 past recovery, or the animal is unclaimed.

CHAPTER 19. AGRICULTURE.

ARTICLE 20. DOGS AND CATS.

§19-20-23. Prohibition of the use of impounded dogs and cats.

- 1 On and after the first day of September, one thousand
- 2 nine hundred eighty-nine, any dog or cat impounded
- 3 under the provisions of this article may not be sold,
- 4 given, transferred or otherwise made available directly
- 5 or indirectly to any person, institution, corporation or
- 6 other entity for use in educational or scientific research
- 7 or related activities. Disposition of impounded dogs or
- 8 cats may only be by adoption as pets or humanely
- 9 destroyed. Any person who violates the provisions of this
- 10 section is guilty of a misdemeanor and, upon conviction
- 11 thereof, shall be fined not less than four hundred fifty
- 12 dollars nor more than two thousand dollars.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-19a. Cruelty to dogs and cats prohibited; putting such animals in fights against each other prohibited; penalties.

1 If any person shall cruelly, or needlessly beat, torture,
2 torment, mutilate, kill or willfully deprive necessary
3 sustenance, to any dog or cat, irrespective of whether
4 any such dog or cat be his or her own or that of another
5 person, or if any such person shall impound or confine
6 any such dog or cat in any place unprotected from the
7 elements or fail to supply the same with a sufficient
8 quantity of food and water, or shall abandon to die any
9 maimed, sick, or diseased dog or cat or shall be engaged
10 in or employed at dogfighting, or putting one dog or cat
11 to fight against another dog or cat or any similar cruelty
12 to any dog or cat, or shall receive money for the
13 admission of any person, or shall use, train or possess
14 a dog or cat for the purpose of seizing, detaining or
15 maltreating any other dog or cat, he or she shall be
16 guilty of a misdemeanor, and, upon conviction, shall be
17 fined not less than one hundred nor more than one
18 thousand dollars, and in addition thereto, in the
19 discretion of the court or magistrate, may be imprisoned
20 in the county jail not exceeding thirty days, and the
21 county humane officer may remove the dog or cat
22 involved and place said animal in the county pound, and
23 said dog or cat shall not be returned to owner (or
24 perpetrator of act of cruelty) but shall be put up for
25 adoption to desirable home or given over into the care
26 of a humane society, or upon the recommendation of a
27 licensed veterinarian shall be humanely destroyed.

CHAPTER 52

(H. B. 2791—By Delegates Ashley and Rowe)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to restoring a former name of a party upon divorce.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-23. Former name of party; restoration.

- 1 The court upon granting an annulment or divorce,
- 2 shall, if requested to do so by either party, allow such
- 3 party to resume the name used prior to his or her first
- 4 marriage. The court shall, if requested to do so by either
- 5 party, allow such party to resume the name of a former
- 6 spouse if such party has any living child or children by
- 7 marriage to such former spouse.

CHAPTER 53

(Com. Sub. for H. B. 2103—By Delegate Hatfield)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article two-c, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the domestic violence act; licensure and funding of domestic violence shelters; definitions; establishing a family protection services board; duties; closure of shelters; provisional license waivers; establishing additional fee for filing of divorce actions to be collected by circuit clerk; funding application requirements; award provisions; referral to shelters; licenses; waiver; rules; and termination of board.

Be it enacted by the Legislature of West Virginia:

That article two-c, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2C. DOMESTIC VIOLENCE ACT.

- §48-2C-1. Title.
- §48-2C-2. Definitions.
- §48-2C-3. Family protection services board.
- §48-2C-4. Duties of board.
- §48-2C-5. Closure of shelters; provisional licensee waivers.
- §48-2C-6. Additional fee to be collected for divorce filing.
- §48-2C-7. Funding application requirements.
- §48-2C-8. Award provisions.
- §48-2C-9. Annual reports of shelter and programs.
- §48-2C-10. Referral to shelters.
- §48-2C-11. Licenses.
- §48-2C-12. Waiver.
- §48-2C-13. Rules and regulations.
- §48-2C-14. Termination of board.

§48-2C-1. Title.

- 1 This article shall be known as the Domestic Violence
- 2 Act of 1989.

§48-2C-2. Definitions.

- 1 As used in this article, unless the context clearly
- 2 requires otherwise:
- 3 (a) "Board" means the family protection services
- 4 board created pursuant to section three of this article;
- 5 (b) "Department" means the department of human
- 6 services or any successor agency however so named;
- 7 (c) "Shelter" or "Family Protection Shelter" means a
- 8 family shelter created for the purpose of receiving, on
- 9 a temporary basis, persons who are victims of domestic
- 10 violence, abuse or rape as well as the children of such
- 11 victims;
- 12 (d) "Commissioner" shall mean the commissioner of
- 13 the department of human services; and
- 14 (e) "Family protection program" or "program" means
- 15 a program offered by a locally controlled organization
- 16 primarily for the purpose of providing services to
- 17 victims of domestic violence or abuse and their children.

§48-2C-3. Family protection services board.

- 1 (a) There is hereby created a family protection
- 2 services board. The board shall consist of five persons.
- 3 The governor, with the advice and consent of the Senate,

4 shall appoint three members of the board. One such
5 member shall be a director of a shelter. One member
6 shall be a member of a major trade association which
7 represents shelters across the state. The final gubernatorial appointee shall be a member of the public. The
8 other two members shall be the commissioner of the
9 department of human services, or his or her designee,
10 and the chairman of the governor's committee on crime,
11 delinquency and correction.

13 (b) The terms of the three members appointed by the
14 governor shall be staggered terms of three years. In the
15 case of the initial appointments, the director of the
16 shelter shall serve a one-year term and the representative of the trade association shall serve a two-year term.

18 (c) In the event that a member of the board shall cease
19 to be qualified for appointment, then such appointment
20 shall terminate.

§48-2C-4. Duties of board.

1 It is the duty of the board to:

2 (a) Regulate its procedural practice;

3 (b) Receive and consider applications for the develop-
4 ment of shelters;

5 (c) Facilitate the formation and operation of shelters;

6 (d) Promulgate rules and regulations to implement
7 the provisions of this article and any applicable federal
8 guidelines;

9 (e) Advise the commissioner on matters of concern
10 relative to his or her responsibilities under this article;

11 (f) Study issues pertinent to family protection shel-
12 ters, programs for domestic violence victims, and report
13 the results to the governor and the Legislature;

14 (g) Conduct hearings as necessary under this article;

15 (h) Delegate to the commissioner such powers and
16 duties of the board as the board may deem appropriate
17 to delegate, including, but not limited to, the authority
18 to approve, disapprove, revoke or suspend licenses;

- 19 (i) Deliver funds to shelters within forty-five days of
20 the approval of a proposal for such shelters;
- 21 (j) Establish a system of peer review which will
22 ensure the safety, well being and health of the clients
23 of all shelters operating in the state;
- 24 (k) Evaluate annually each funded shelter to deter-
25 mine its compliance with the goals and objectives set out
26 in its original application for funding or subsequent
27 revisions;
- 28 (l) To award to shelters, for each fiscal year, ninety-
29 five percent of the total funds collected and paid over
30 during the fiscal year to the special revenue account
31 established pursuant to section twenty-four, article one
32 of this chapter and to expend, during said period a sum
33 not in excess of five percent of said funds for cost of
34 administering provisions of this article;
- 35 (m) Establish and enforce system of standards for
36 annual licensure for all shelters and programs in the
37 state;
- 38 (n) Enforce standards; and
- 39 (o) Review its rules and regulations biannually.

**§48-2C-5. Closure of shelters; provisional licensee
waivers.**

- 1 (a) The board may close any shelter which violates the
2 standards established under this article and which
3 threatens the health, well being and safety of its clients:
4 *Provided*, That the board shall establish a plan to place
5 such clients in other shelters and to develop a method
6 to continue serving the areas served by the shelter to be
7 closed.
- 8 (b) The board may place a shelter, which violates
9 standards established under this article and which
10 threatens the health, well being and safety of its clients,
11 under receivership and operate said shelter. The board
12 shall have access and may use all assets of the shelter.
- 13 (c) In order to close or place a shelter in receivership,
14 the board shall hold a public hearing within the confines

15 of municipality or county in which the shelter is located.
16 The board, by the first day of September, one thousand
17 nine hundred eighty-nine, shall establish rules and
18 regulations to govern the conduct of such hearings:
19 *Provided*, That four members of the board must vote in
20 the affirmative before a shelter is closed or placed in
21 receivership.

22 (d) If a shelter disagrees with the findings of the
23 board, the shelter may appeal such ruling to the circuit
24 court of Kanawha County or the circuit court of the
25 county where the shelter is located pursuant to the
26 provisions of section four, article five, chapter twenty-
27 nine-a of this code.

§48-2C-6. Additional fee to be collected for divorce filing.

1 In addition to any fee heretofore established for the
2 filing of a divorce action, the clerk of the circuit court
3 shall collect an additional fee of thirty dollars. The fee
4 shall be deposited in the special revenue fund estab-
5 lished pursuant to section twenty-four, article one,
6 chapter forty-eight of this code: *Provided*, That such
7 additional fee shall not be collected by the clerk from
8 persons complying with the provisions of section one,
9 article two, chapter fifty-nine of this code pertaining to
10 suits filed by poor persons.

§48-2C-7. Funding application requirements.

1 (a) A shelter or program may apply to the board for
2 a grant of funds as provided by this article. The
3 application shall include, but not be limited to, the
4 following:

5 (1) Evidence that the organization submitting the
6 application is incorporated in this state as a nonprofit
7 corporation.

8 (2) A list of the incorporators of the corporation and
9 a list of the officers and the board of directors;

10 (3) The proposed budget of the shelter or program for
11 the following fiscal year;

12 (4) A summary of the services proposed to be offered
13 in the following fiscal year by the shelter or program;

14 (5) An evaluation of local needs for a shelter or
15 program;

16 (6) An estimate of the number of people to be served
17 by the shelter or program during the following fiscal
18 year; and,

19 (7) Any other information the board may feel is
20 necessary.

21 (b) In order to qualify for a grant of funds under this
22 article, each family protection shelter or program shall:

23 (1) Provide or propose to provide a facility which will
24 serve as temporary shelter to receive, care and provide
25 services for persons who are victims of domestic violence
26 or abuse and their children;

27 (2) Be incorporated in this state as a nonprofit
28 corporation;

29 (3) Have a board of directors which represents a
30 broad spectrum of the community to be served, includ-
31 ing at least one person who is or has been a victim of
32 domestic violence or abuse;

33 (4) Receive at least fifty-five percent of its funds from
34 sources other than funds distributed under this article.
35 These sources may be public or private and may include
36 contributions of goods or services; and

37 (5) Require persons employed by or volunteering
38 services to the shelter or program to maintain the
39 confidentiality of any information which may identify
40 individuals served by it.

41 (c) A family protection shelter or program may not be
42 funded initially if it is shown that it discriminates in its
43 services on the basis of race, religion, age, sex, marital
44 status, national origin or ancestry. If such discrimina-
45 tion occurs after initial funding, the shelter or program
46 may not be refunded until the discrimination ceases.

47 (d) A family protection shelter program may not be
48 refunded if its original application projected the
49 provision of residential services and such services were
50 not provided in the first six months following disburse-

51 ment of the original funds under this article: *Provided,*
52 That upon a subsequent showing that the funds were
53 used in the manner proposed in the original application,
54 the shelter or program is not barred from subsequent
55 funding. A revision of the original application may be
56 filed with the board.

§48-2C-8. Award provisions.

1 Grants made pursuant to this article shall be awarded
2 on the basis of the following criteria:
3 (a) Demonstration of local need for proposed services;
4 (b) Merit of project as proposed;
5 (c) Demonstration of local control of the shelter or
6 program;
7 (d) Administrative design and efficiency of the
8 project; and
9 (e) The Board shall develop a formula for equal
10 distribution of fifty percent of any money it awards.

§48-2C-9. Annual reports of shelter and programs.

1 A shelter or program receiving funds pursuant to this
2 article shall file an annual report with the board by the
3 thirty-first day of each October for the prior fiscal year.
4 The report shall include statistics on the number of
5 persons served, the relationship of the victim to the
6 abuser, services provided to the abuser, the number of
7 referrals made for medical, psychological, financial,
8 educational, vocational, child care or legal services and
9 the results of an independent audit. No information
10 contained in the report may identify any person served
11 by the shelter or enable any person to determine the
12 identity of any such person.

§48-2C-10. Referral to shelters.

1 Where shelters are available, any law-enforcement
2 officer or any public authority investigating an alleged
3 incident of domestic violence shall advise the victim of
4 such abuse of the availability of the family protection
5 shelter to which such person may be admitted.

§48-2C-11. Licenses.

1 (a) The board shall establish an application for
2 licensure for all shelters and programs.

3 (b) Licenses may be renewed on an annual basis with
4 all such licenses having a term of one year commencing
5 on the first day of July and terminating on the thirtieth
6 day of June on the next year.

7 (c) The board shall grant or deny any license within
8 forty-five days of the receipt of the application.

9 (d) The license granted by the board shall be conspic-
10 uously displayed by the licensees.

§48-2C-12. Waiver.

1 The board may grant a provisional license or grant
2 a waiver of licensure if the board deems such waiver or
3 provisional license necessary for the shelter or program.
4 All such waivers or provisional licenses shall be
5 reviewed semiannually.

§48-2C-13. Rules and regulations.

1 The board shall promulgate rules and regulations to
2 effectuate the provisions of this article. The rules and
3 regulations shall not take effect until the first set of
4 rules and regulations are approved by the Legislature.

§48-2C-14. Termination of board.

1 The family protection services board shall be termi-
2 nated pursuant to the provisions of article ten, chapter
3 four of this code, on the first day of July, one thousand
4 nine hundred ninety-two, unless sooner terminated or
5 unless sooner continued or reestablished pursuant to
6 that article.

CHAPTER 54

(Com. Sub. for S. B. 575—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to repeal article one, chapter five-c of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended; to repeal article sixteen, chapter thirty-one of

said code; and to amend and reenact article fifteen, chapter thirty-one of said code, relating to the West Virginia Economic Development Authority Act; making certain legislative findings as to general economic condition of West Virginia and identifying segments of state economy requiring promotion and development and further identifying financing methods necessary to finance and promote economic and industrial development within state; recognizing that availability of financial assistance through creation of insurance fund will promote economic development of state; further recognizing public interest in establishing state instrumentality with powers to address economic development needs of the state including, but not limited to, furnishing money and credit to approved industrial development agencies and enterprises, promoting establishment of new commercial and industrial projects and retaining existing projects; setting forth and identifying purposes of act including, but not limited to, creation of economic development authority to develop and advance business prosperity and economic welfare of state, to borrow money and issue bonds, notes, commercial paper and other debt instruments, to furnish money and credit or credit enhancement to industrial development agencies and enterprises for the promotion of new commercial and industrial projects and to retain existing projects, to insure the financing of working capital or the refinancing of existing debt of an enterprise, and creation of an insurance fund for credit enhancement purposes, and declaring that all such purposes are public purposes; abolishing West Virginia industry and jobs development corporation and designating economic development authority as its successor; defining certain key terms; establishing composition of authority and setting forth appointment and terms of members thereof and voting by such members; stating general powers of authority, including, but not limited to, the issuance of bonds and notes, borrowing money, financing projects, insuring bonds and notes issued by the authority and others, and insuring loans made to various parties by financial institutions, and to apply for, develop, maintain and

operate foreign trade zones in accordance with applicable federal law; providing for loans to industrial development agencies and enterprises for certain projects; creating, as a credit enhancement vehicle, an insurance fund which may be used, among other purposes, to insure payment or repayment of all or any part of bonds and notes issued by the authority as well as by certain other public bodies, to insure payment or repayment of instruments executed, obtained or delivered in connection with issuance and sale of such bonds and notes, and to insure payment or repayment of other types of debt instruments entered into by an enterprise or a state public body or authority with a financial institution, and enabling authority to apply for, develop, maintain and operate foreign trade zones in accordance with applicable federal law; authorizing authority to issue bonds and notes and providing that such bonds and notes are special obligations of the authority, and specifying form of such bonds and notes; setting forth procedure for approval of projects, issuance of bonds and notes and other matters concerning authority; providing that bonds or notes may be secured by trust agreement and that trustee may be any bank or trust company located within or outside state, and providing for pledge or assignment of revenues; setting forth permitted uses of funds acquired by authority and restrictions thereon; providing for refunding bonds and notes; establishing that bonds and notes issued and other obligations undertaken by authority are not debts of state or any political subdivision thereof; providing that bonds and notes are negotiable instruments and constitute legal investments; exempting authority from payment of taxes or assessments upon any property acquired or used by authority or upon income therefrom; shielding various parties from personal liability with respect to bonds or notes issued by authority; declaring that powers granted under act cumulative; setting forth authority of board of investments; providing for loan and insurance application requirements; providing for confidentiality of certain documentary materials or data made or received by authority; establishing economic development fund and setting

forth uses thereof; authorizing governor to transfer state property to authority; providing for validity of certain pledges, mortgages and other security instruments; providing for collection of money accruing to authority and deposit thereof into state treasury; providing conflicts of interest clause; providing for agreements with federal agencies; requiring annual audits; enabling public corporations to apply for foreign trade zone status in accordance with applicable federal law; providing severability and construction clauses; and declaring that projects shall not be deemed public improvements.

Be it enacted by the Legislature of West Virginia:

That article one, chapter five-c, and article sixteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article fifteen, chapter thirty-one of said code be amended and reenacted, all to read as follows:

**ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT
AUTHORITY.**

- §31-15-1. Short title.
- §31-15-2. Legislative findings.
- §31-15-3. Purposes of article.
- §31-15-3a. West Virginia Industry and Jobs Development Corporation abolished; establishment of economic development authority as successor to corporation.
- §31-15-4. Definitions.
- §31-15-5. West Virginia economic development authority; composition; appointment; terms; delegation of authority by chairman; voting; compensation and expenses.
- §31-15-6. General powers of authority.
- §31-15-7. Loans to industrial development agencies or enterprises for projects.
- §31-15-8. Insurance fund.
- §31-15-9. Bonds and notes issued pursuant to this article.
- §31-15-10. Approval by authority.
- §31-15-11. Trustee for bondholders; contents of trust agreement; pledge or assignment of revenues.
- §31-15-12. Use of funds by authority; restrictions thereon relating to projects.
- §31-15-13. Refunding bonds or notes.
- §31-15-14. Obligations of authority undertaken pursuant to this article not debt of state, county, municipality or any political subdivision.
- §31-15-15. Negotiability of bonds and notes issued pursuant to this article.
- §31-15-16. Bonds and notes issued pursuant to this article; legal investments.
- §31-15-17. Exemption from taxation.

- §31-15-18. Personal liability; persons executing bonds or notes issued pursuant to this article.
- §31-15-19. Cumulative authority as to powers conferred; applicability of other statutes and charters; bonds and notes issued pursuant to this article.
- §31-15-20. Authority of the board of investments.
- §31-15-21. Loans and insurance application requirements.
- §31-15-22. Documentary materials concerning trade secrets; commercial or financial information; or confidentiality.
- §31-15-23. Economic development fund.
- §31-15-24. Transfer of state property to the authority.
- §31-15-25. Validity of any pledge, mortgage, deed of trust or security instrument.
- §31-15-26. Money of the authority.
- §31-15-27. Conflict of interest; when contracts void.
- §31-15-28. Agreement with federal agencies not to alter or limit powers of authority.
- §31-15-29. Audits.
- §31-15-30. Projects not to be considered public improvements.
- §31-15-31. Foreign trade zones; authority approval.
- §31-15-32. Severability.
- §31-15-33. Construction.

§31-15-1. Short title.

- 1 This article shall be known and may be cited as "The
- 2 West Virginia Economic Development Authority Act."

§31-15-2. Legislative findings.

- 1 It is hereby determined and declared as a matter of
- 2 legislative finding: (a) That unemployment exists in
- 3 many areas of the state and may well come about, from
- 4 time to time, in other areas of the state; (b) that in some
- 5 areas of the state, unemployment is a serious problem
- 6 and has been for so long a period of time that, without
- 7 remedial measures, it may become so in other areas of
- 8 the state; (c) that economic insecurity due to unemploy-
- 9 ment is a serious menace to the health, safety, morals
- 10 and general welfare of the people of the entire state; (d)
- 11 that widespread industry unemployment produces
- 12 indigency which falls with crushing force upon all
- 13 unemployed workers and ultimately upon the state in
- 14 the form of welfare and unemployment compensation;
- 15 (e) that the absence of employment and business
- 16 opportunities for youth is a serious threat to the strength
- 17 and permanence of their faith in our American political
- 18 and economic institutions and the philosophy of freedom
- 19 on which those institutions are based; (f) that lack of

20 employment and business opportunities has resulted in
21 thousands of workers and their families leaving the state
22 to find such opportunities elsewhere, and that this
23 exodus has adversely affected the tax base of counties
24 and municipalities resulting in an impairment of their
25 financial ability to support education and other local
26 government services; (g) that security against unemploy-
27 ment and the spread of indigency and economic stagna-
28 tion can best be provided by the promotion, attraction,
29 stimulation, rehabilitation and revitalization of com-
30 merce, tourism, industry and manufacturing; (h) that
31 the present and future health, safety, morals, right to
32 gainful employment and general welfare of the people
33 of the state require as a public purpose the promotion
34 and development of new and expanded coal and other
35 energy production, industrial, commercial, tourist and
36 manufacturing enterprises within this state; (i) that the
37 means and measures being authorized for the financing
38 of projects, including the insuring of loans or other debt
39 issued for working capital or the refinancing of existing
40 debt of an enterprise, are, as a matter of public policy,
41 for the public purposes of the several counties, munic-
42 ipalities and the state; (j) that the device under which
43 private community industrial development organiza-
44 tions in the state acquire or build industrial buildings
45 or sites and equip the same with funds raised through
46 popular subscription, loans or otherwise for lease and
47 sale to new or expanding industries has proven effective
48 in creating new employment and business opportunities
49 locally, is in accord with the American tradition of
50 community initiative and enterprise, and requires and
51 deserves encouragement and support from the state, as
52 a means toward alleviation of unemployment and
53 economic distress; (k) that community industrial
54 development corporations in the state have invested
55 substantial funds in successful coal production, indus-
56 trial projects and are experiencing difficulty in under-
57 taking additional projects by reason of the partial
58 inadequacy of their own funds potentially available from
59 local subscription sources and by reason of limitations
60 of local financial institutions in providing additional and
61 sufficiently sizable first deed of trust or mortgage loans

62 or letters of credit and other forms of credit enhance-
63 ment; (l) that an urgent need exists to stimulate a larger
64 flow of private investment funds from banks, investment
65 houses, insurance companies and other financial institu-
66 tions into projects; (m) that by increasing the number
67 of projects presenting attractive opportunities for
68 private investment, a larger portion of the private
69 capital available in this state for investment can be put
70 to use for the general economic development of the state;
71 (n) that the availability of financial assistance through
72 the creation of an insurance fund will promote the
73 economic development of the state; and that it is in the
74 public interest, in order to address the needs aforesaid,
75 that a state instrumentality be created as a public body
76 corporate with full powers to accept grants, gifts and
77 appropriations, to generate revenues, to borrow money
78 and issue its bonds, notes, commercial paper, other debt
79 instruments and security interests to the end that funds
80 obtained thereby may be used to furnish money and
81 credit to approved industrial development agencies or
82 enterprises or to promote the establishment of new
83 projects or to retain existing projects.

§31-15-3. Purposes of article.

1 The purposes of this article shall be to provide for the
2 formation of a public economic development authority
3 to promote, assist, encourage and, in conjunction with
4 such banking corporations or institutions, trust compan-
5 ies, savings banks, building and loan associations,
6 insurance companies or related corporations, partner-
7 ships, foundations or other institutions, to develop and
8 advance the business prosperity and economic welfare
9 of the state of West Virginia; to encourage and assist in
10 the location of new business and industry; to stimulate
11 and assist in the expansion of all kinds of business
12 activity which will tend to promote the business
13 development and maintain the economic stability of this
14 state, provide maximum opportunities for employment,
15 encourage thrift and improve the standard of living of
16 the citizens of this state; to cooperate and act in
17 conjunction with other organizations, public or private,
18 the objects of which are the promotion and advancement

19 of industrial, commercial, tourist or manufacturing
20 developments in this state; to borrow moneys and to
21 issue its bonds, notes, commercial paper, other debt
22 instruments and security interests as well as creating an
23 insurance fund for credit enhancement purposes; to
24 furnish money and credit or credit enhancement to
25 approved industrial development agencies or enterprises
26 in this state or for the promotion of new projects or to
27 retain existing projects or to financially assist projects
28 by insuring bonds, notes, loans and other instruments,
29 including, but not limited to, the insuring of financing
30 of working capital or the refinancing of existing debt
31 of an enterprise, thereby establishing a source of credit
32 and credit enhancement not otherwise available there-
33 for. Such purposes are hereby declared to be public
34 purposes for which public money may be spent and are
35 purposes which will promote the health, safety, morals,
36 right to gainful employment, business opportunities and
37 general welfare of the inhabitants of the state.

**§31-15-3a. West Virginia industry and jobs development
corporation abolished; establishment of
economic development authority as succes-
sor to corporation.**

1 The authority shall be the corporate successor to the
2 West Virginia industry and jobs development corpora-
3 tion and is hereby vested with all right, title and interest
4 of such corporation in and to all property, rights and
5 choses in action heretofore owned by or vested in such
6 corporation, including, but not limited to, its loan
7 portfolio, and shall assume all debts, liabilities and other
8 obligations, if any, of such corporation. As of the
9 effective date of this legislation, such corporation shall
10 cease to exist and all rights and interests heretofore
11 vested in such corporation shall be vested in the
12 authority.

13 The unexpended balance of funds authorized under
14 section seventeen, article one, chapter five-c of this code
15 available for use of the West Virginia industry and jobs
16 development corporation as of the effective date of this
17 legislation is hereby transferred to the authority.

§31-15-4. Definitions.

1 Unless the context clearly indicates otherwise, as used
2 in this article:

3 (a) "Authority" means the West Virginia economic
4 development authority.

5 (b) "Board" means the governing body of the
6 authority.

7 (c) "Board of investments" means the board of
8 investments established by article six, chapter twelve of
9 this code.

10 (d) "Bonds" means bonds or other debt instruments of
11 the authority issued under this article, whether the
12 interest thereon is taxable or tax-exempt for federal
13 income tax purposes.

14 (e) "Business plan" means a document detailing the
15 sales, production and distribution plans of an enterprise,
16 together with the expenditures necessary to carry out
17 those plans (including budget and cash flow projections)
18 on an annual basis, and an employment plan setting
19 forth steps to be taken by the enterprise to retain jobs
20 or reduce unemployment in this state.

21 (f) "Cost of establishing a project" means the cost of
22 acquiring existing facilities, cost of machinery, cost of
23 equipment and fixtures, cost of construction, including,
24 without limitation, cost of improvements, repairs and
25 renovations, cost of all lands, water areas, property
26 rights and easements, financing charges and interest
27 prior to and during construction, cost of architectural,
28 engineering, legal and financial or other consulting
29 services, plans, specifications and surveys, estimates of
30 costs and any other expenses necessary or incident to
31 determining the feasibility or practicability of any
32 project, together with such other costs and expenses as
33 may be necessary or incidental to the financing and the
34 construction or acquisition of the project and the placing
35 of the same in operation.

36 (g) "County" means any county of this state.

37 (h) "Enterprise" means an entity which is or proposes

38 to be engaged in this state in any business activity for
39 profit. The entity may be owned, operated, controlled,
40 or under the management of a person, partnership,
41 corporation, trust, community-based development
42 organization or council, local commerce group, employee
43 stock ownership plan, pension or profit-sharing plan,
44 trust, a group of participating employees who desire to
45 own an entity which does not presently exist, or any
46 similar entity or organization.

47 (i) "Federal agency" means the United States of
48 America and any department, corporation, agency or
49 instrumentality created, designated or established by
50 the United States of America.

51 (j) "Financing plan" means a plan designed to meet
52 the financing needs of an enterprise as reflected in the
53 business plan.

54 (k) "Fund" means the economic development fund
55 provided for in section twenty-three of this article.

56 (l) "Government" means state and federal govern-
57 ment, and any political subdivision, agency or instru-
58 mentality thereof, corporate or otherwise.

59 (m) "Industrial development agency" means any
60 incorporated organization, foundation, association or
61 agency to whose members or shareholders no profit
62 inures, which has as its primary function the promotion,
63 encouragement and development of industrial, commer-
64 cial, manufacturing and tourist enterprises or projects
65 in this state.

66 (n) "Insurance fund" means the insurance fund
67 created by this article.

68 (o) "Loan" means any extension of financing by the
69 authority to an industrial development agency or an
70 enterprise, including, but not limited to, a loan, a lease
71 or an installment sale.

72 (p) "Municipality" means any city or town in this
73 state.

74 (q) "Notes" means any notes, including commercial
75 paper, of the authority issued under this article whether

76 the interest thereon is taxable or tax-exempt for federal
77 income tax purposes.

78 (r) "Project" means a commercial or industrial
79 undertaking and all of the assets reasonably and
80 necessarily required therefor, all as determined by the
81 authority, which determination shall be conclusive, and
82 shall include, without limiting the generality of the
83 foregoing, industrial projects and commercial projects
84 as presently defined in section three, article two-c,
85 chapter thirteen of this code.

86 (s) "Revenues" means all fees, premiums, charges,
87 moneys, profits, payments of principal of, or interest on,
88 loans and other investments, gifts, grants, appropria-
89 tions, contributions and all other income derived or to
90 be derived by the authority under this article.

91 (t) "Security interest" means an interest in the loan
92 portfolio of the authority which interest is secured by
93 an underlying loan or loans and is evidenced by a note
94 issued by the authority.

**§31-15-5. West Virginia economic development authority;
composition; appointment; terms; delegation
of authority by chairman; voting; compensa-
tion and expenses.**

1 The West Virginia economic development authority
2 heretofore created is hereby continued as a body
3 corporate and politic, constituting a public corporation
4 and government instrumentality.

5 The authority shall be composed of a board of
6 members consisting of a chairman, who shall be the
7 governor, or his designated representative, the tax
8 commissioner and seven members who shall be ap-
9 pointed by the governor, by and with the advice and
10 consent of the Senate, and who shall be broadly
11 representative of the geographic regions of the state.
12 The board shall direct the exercise of all the powers
13 given to the authority in this article. The governor shall
14 also be the chief executive officer of the authority, and
15 shall designate the treasurer and the secretary of the
16 board.

17 Upon the effective date of this legislation, the
18 governor shall forthwith appoint seven members of the
19 board for staggered terms. The terms of the board
20 members first taking office on or after the effective date
21 of this legislation shall expire as designated by the
22 governor at the time of the nomination, two at the end
23 of the first year, two at the end of the second year, two
24 at the end of the third year, and one at the end of the
25 fourth year, after the first day of July, one thousand nine
26 hundred eighty-nine. As these original appointments
27 expire, each subsequent appointment shall be for a full
28 four-year term. Any member whose term has expired
29 shall serve until his successor has been duly appointed
30 and qualified. Any person appointed to fill a vacancy
31 shall serve only for the unexpired term. Any member
32 shall be eligible for reappointment. The term of any
33 person serving as a member of the board immediately
34 preceding the effective date of this legislation shall cease
35 and otherwise expire upon such effective date: *Provided,*
36 That any such member shall be eligible for
37 reappointment.

38 The governor may, by written notice filed with the
39 secretary of the authority, from time to time, delegate
40 to any subordinate the power to represent him at any
41 meeting of the authority. In such case, the subordinate
42 shall have the same power and privileges as the
43 governor and may vote on any question.

44 Members of the authority shall not be entitled to
45 compensation for services performed as members, but
46 shall be entitled to reimbursement for all reasonable
47 and necessary expenses actually incurred in the perfor-
48 mance of their duties.

49 A majority of the members shall constitute a quorum
50 for the purpose of conducting business. Except in the
51 case of a loan or insurance application or unless the
52 bylaws require a larger number, action may be taken
53 by majority vote of the members present. Approval or
54 rejection of a loan or insurance application shall be
55 made by majority vote of the full membership of the
56 board.

57 The board shall manage the property and business of
58 the authority and may prescribe, amend, adopt and
59 repeal bylaws and rules and regulations governing the
60 manner in which the business of the authority is
61 conducted.

62 The board shall, without regard to the provisions of
63 civil service laws applicable to officers and employees
64 of the state of West Virginia, appoint such managers,
65 assistant managers, officers, employees, attorneys and
66 agents as are necessary for the transaction of its
67 business, fix their compensation, define their duties and
68 provide a system of organization to fix responsibility
69 and promote efficiency. Any appointee of the board may
70 be removed at the discretion of the board. The authority
71 may reimburse any state spending unit for any special
72 expense actually incurred in providing any service or
73 the use of any facility to the authority.

74 In cases of any vacancy in the office of a member, such
75 vacancy shall be filled by the governor. Any member
76 appointed to fill a vacancy in the board occurring prior
77 to the expiration of the term for which his predecessor
78 was appointed shall be appointed for the remainder of
79 such term.

80 The governor may remove a member in the case of
81 incompetence, neglect of duty, gross immorality or
82 malfeasance in office, and may declare such member's
83 office vacant and appoint a person for such vacancy as
84 provided in other cases of vacancy.

85 The secretary of the board shall keep a record of the
86 proceedings of the board and perform such other duties
87 as may be determined appropriate by the board. The
88 treasurer shall be custodian of all funds of the authority
89 and shall be bonded in such amount as other members
90 of the board may designate.

§31-15-6. General powers of authority.

1 The authority, as a public corporation and government-
2 tal instrumentality exercising public powers of the state,
3 shall have and may exercise all powers necessary or

4 appropriate to carry out the purposes of this article,
5 including the power:

6 (a) To cooperate with industrial development agencies
7 in efforts to promote the expansion of industrial,
8 commercial, manufacturing and tourist activity in this
9 state.

10 (b) To determine, upon the proper application of an
11 industrial development agency or an enterprise,
12 whether the declared public purposes of this article have
13 been or will be accomplished by the establishment by
14 such agency or enterprise of a project in this state.

15 (c) To conduct examinations and investigations and to
16 hear testimony and take proof, under oath or affirma-
17 tion, at public or private hearings, on any matter
18 relevant to this article and necessary for information on
19 the establishment of any project.

20 (d) To issue subpoenas requiring the attendance of
21 witnesses and the production of books and papers
22 relevant to any hearing before such authority or one or
23 more members appointed by it to conduct any hearing.

24 (e) To apply to the circuit court having venue of such
25 offense to have punished for contempt any witness who
26 refuses to obey a subpoena, to be sworn or affirmed or
27 to testify or who commits any contempt after being
28 summoned to appear.

29 (f) To authorize any member of the authority to
30 conduct hearings, administer oaths, take affidavits and
31 issue subpoenas.

32 (g) To financially assist projects by insuring obliga-
33 tions in the manner provided in this article through the
34 use of the insurance fund.

35 (h) To finance any projects by making loans to
36 industrial development agencies or enterprises upon
37 such terms as the authority shall deem appropriate:
38 *Provided*, That nothing contained in this subsection (h)
39 or under any other provision in this article shall be
40 construed as permitting the authority to make loans for
41 working capital: *Provided, however*, That nothing

42 contained in this article shall be construed as prohibit-
43 ing the authority from insuring loans for working
44 capital made to industrial development agencies or to
45 enterprises by financial institutions: *Provided further,*
46 That nothing contained in this subsection or any other
47 provision of this article shall be construed as permitting
48 the authority to refinance existing debt except when
49 such refinancing will result in the expansion of the
50 enterprise whose debt is to be refinanced or in the
51 creation of new jobs.

52 (i) To issue revenue bonds or notes to fulfill the
53 purposes of this article, and to secure the payment of
54 such bonds or notes, all as hereinafter provided.

55 (j) To issue and deliver revenue bonds or notes in
56 exchange for a project.

57 (k) To borrow money for its purposes and issue bonds
58 or notes for the money and provide for the rights of the
59 holders of the bonds or notes or other negotiable
60 instruments, to secure the bonds or notes by a deed of
61 trust on, or an assignment or pledge of, any or all of its
62 property and property of the project, including any part
63 of the security for loans, and the authority may issue and
64 sell its bonds and notes, by public or private sale, in such
65 principal amounts as it shall deem necessary to provide
66 funds for any purposes under this article, including the
67 making of loans for the purposes set forth in this article.

68 (l) To maintain such sinking funds and reserves as the
69 board shall determine appropriate for the purposes of
70 meeting future monetary obligations and needs of the
71 authority.

72 (m) To sue and be sued, implead and be impleaded,
73 and complain and defend in any court.

74 (n) To adopt, use and alter at will a corporate seal.

75 (o) To make, amend, repeal and adopt both bylaws
76 and rules and regulations for the management and
77 regulation of its affairs.

78 (p) To appoint officers, agents and employees and to
79 contract for and engage the services of consultants.

80 (q) To make contracts of every kind and nature to
81 execute all instruments necessary or convenient for
82 carrying on its business.

83 (r) To accept grants and loans from and enter into
84 contracts and other transactions with any federal
85 agency.

86 (s) To take title by conveyance or foreclosure to any
87 project where acquisition is necessary to protect any
88 loan previously made by the authority and to sell, by
89 public or private sale, transfer, lease or convey such
90 project to any enterprise.

91 (t) To participate in any reorganization proceeding
92 pending pursuant to the United States Code (being the
93 act of Congress establishing a uniform system of
94 bankruptcy throughout the United States, as amended)
95 or in any receivership proceeding in a state or federal
96 court for the reorganization or liquidation of an
97 enterprise. The authority may file its claim against any
98 such enterprise in any of the foregoing proceedings, vote
99 upon any questions pending therein which requires the
100 approval of the creditors participating in any reorgan-
101 ization proceeding or receivership, exchange any
102 evidence of such indebtedness for any property, security
103 or evidence of indebtedness offered as a part of the
104 reorganization of such enterprise or of any other entity
105 formed to acquire the assets thereof and may comprom-
106 ise or reduce the amount of any indebtedness owing to
107 it as a part of any such reorganization.

108 (u) To acquire, construct, maintain, improve, repair,
109 replace and operate projects within this state, as well
110 as streets, roads, alleys, sidewalks, crosswalks and other
111 means of ingress and egress to and from projects located
112 within this state.

113 (v) To acquire, construct, maintain, improve, repair
114 and replace and operate pipelines, electric transmission
115 lines, waterlines, sewer lines, electric power substations,
116 waterworks systems, sewage treatment and disposal
117 facilities and any combinations thereof for the use and
118 benefit of any enterprise located within this state.

119 (w) To acquire watersheds, water and riparian rights,
120 rights-of-way, easements, licenses and any and all other
121 property, property rights and appurtenances for the use
122 and benefit of any enterprise located within this state.

123 (x) To acquire, by purchase, lease, donation or
124 eminent domain, any real or personal property, or any
125 right or interest therein, as may be necessary or
126 convenient to carry out the purposes of the authority.
127 Title to all property, property rights and interests
128 acquired by the authority shall be taken in the name of
129 the authority.

130 (y) To issue renewal notes, or security interests, to
131 issue bonds to pay notes or security interests and,
132 whenever it deems refunding expedient, to refund any
133 bonds or notes by the issuance of new bonds or notes,
134 whether the bonds or notes to be refunded have or have
135 not matured and whether or not the authority originally
136 issued the bonds or notes to be refunded.

137 (z) To apply the proceeds from the sale of renewal
138 notes, security interests or refunding bonds or notes to
139 the purchase, redemption or payment of the notes,
140 security interests or bonds or notes to be refunded.

141 (aa) To accept gifts or grants of property, funds,
142 security interests, money, materials, labor, supplies or
143 services from the United States of America or from any
144 governmental unit or any person, firm or corporation,
145 and to carry out the terms or provisions of, or make
146 agreements with respect to, or pledge, any gifts or
147 grants, and to do any and all things necessary, useful,
148 desirable or convenient in connection with the procur-
149 ing, acceptance or disposition of gifts or grants.

150 (bb) To the extent permitted under its contracts with
151 the holders of bonds, security interests or notes of the
152 authority, to consent to any modification of the rate of
153 interest, time of payment of any installment of principal
154 or interest, security or any other term of any bond,
155 security interests, note or contract or agreement of any
156 kind to which the authority is a party.

157 (cc) To sell loans, security interests or other obliga-

158 tions in the loan portfolio of the authority. Such security
159 interests shall be evidenced by instruments issued by the
160 authority. Proceeds from the sale of loans, security
161 interests, or other obligations may be used in the same
162 manner and for the same purposes as bond and note
163 revenues.

164 (dd) To procure insurance against any losses in
165 connection with its property, operations or assets in such
166 amounts and from such insurers as the authority deems
167 desirable.

168 (ee) To sell, license, lease, mortgage, assign, pledge or
169 donate its property, both real and personal, or any right
170 or interest therein to another or authorize the possession,
171 occupancy or use of such property or any right or
172 interest therein by another, in such manner and upon
173 such terms as it deems appropriate.

174 (ff) To participate with the state and federal agencies
175 in efforts to promote the expansion of commercial and
176 industrial development in this state.

177 (gg) To finance, organize, conduct, sponsor, partici-
178 pate and assist in the conduct of special institutes,
179 conferences, demonstrations and studies relating to the
180 stimulation and formation of business, industry and
181 trade endeavors.

182 (hh) To conduct, finance and participate in technolog-
183 ical, business, financial and other studies related to
184 business and economic development.

185 (ii) To conduct, sponsor, finance, participate and
186 assist in the preparation of business plans, financing
187 plans and other proposals of new or established busi-
188 nesses suitable for support by the authority.

189 (jj) To prepare, publish and distribute, with or
190 without charge as the authority may determine, such
191 technical studies, reports, bulletins and other materials
192 as it deems appropriate, subject only to the maintenance
193 and respect for confidentiality of client proprietary
194 information.

195 (kk) To exercise such other and additional powers as

196 may be necessary or appropriate for the exercise of the
197 powers herein conferred.

198 (ll) To exercise all of the powers which a corporation
199 may lawfully exercise under the laws of this state.

200 (mm) To contract for the provision of legal services by
201 private counsel, and notwithstanding the provisions of
202 article three, chapter five, such counsel may, but is not
203 limited to, represent the authority in court, negotiate
204 contracts and other agreements on behalf of the
205 authority, render advice to the authority on any matter
206 relating thereto, prepare contracts and other agree-
207 ments, and provide such other legal services as may be
208 requested by the authority.

209 (nn) To develop, maintain, operate and apply for the
210 establishment of foreign trade zones pursuant to and in
211 accordance with all applicable provisions of federal law.

**§31-15-7. Loans to industrial development agencies or
enterprises for projects.**

1 (a) When it has determined upon application of an
2 industrial development agency or an enterprise that the
3 establishment or acquisition of a particular project has
4 accomplished or will accomplish the public purposes of
5 this article, the authority may contract to loan such
6 agency or enterprise up to one hundred percent of the
7 estimated cost of such project from any or all of the
8 following sources:

9 (1) The proceeds of bonds or notes issued by the
10 authority pursuant to this article;

11 (2) Moneys in the fund available to make loans; or

12 (3) The investment in such loans by the board of
13 investments through the consolidated fund of the state
14 as provided in this article.

15 (b) Loans made under subsection (a) of this section
16 shall be subject to the following conditions:

17 (1) If the authority is providing less than one hundred
18 percent financing for the project, the authority shall
19 determine that other sources of funds will be available
20 to complete the project;

21 (2) The loan shall contain such terms and conditions
22 as the authority deems appropriate, which terms and
23 conditions shall be set forth in a resolution adopted by
24 the board in accordance with the provisions of section
25 ten of this article;

26 (3) The authority may, in its discretion, include within
27 the terms of a loan minimum project operating periods,
28 liquidated damage provisions for cessation of operations
29 prior to the end of the loan period, loan acceleration
30 provisions, project equipment purchase options in the
31 event of early closure and other provisions to protect the
32 jobs intended to be created by the project;

33 (4) The industrial development agency or enterprise
34 shall pay such loan fees as may be prescribed by the
35 authority from time to time pursuant to the provisions
36 of this article.

37 Money loaned by the authority to an industrial
38 development agency or enterprise pursuant to subdivi-
39 sions (2) and (3), subsection (a) of this section seven shall
40 be withdrawn from the fund and paid over to the agency
41 or enterprise in such manner as shall be determined by
42 the authority, and the authority shall deposit all
43 payments of interest on such loans and the principal
44 thereof in the fund.

§31-15-8. Insurance fund.

1 (a) There is hereby created an insurance fund which
2 shall be a continuing, nonlapsing, revolving fund that
3 consists of:

4 (1) Moneys appropriated by the state to the insurance
5 fund;

6 (2) Premiums, fees, and any other amounts received
7 by the authority with respect to financial assistance
8 provided by the authority from the insurance fund;

9 (3) Upon the satisfaction of any indebtedness or other
10 obligation owed on any property held or acquired by the
11 authority, such proceeds as designated by the authority
12 from the sale, lease, or other disposition of such
13 property;

14 (4) Income from investments made from moneys in
15 the insurance fund; and

16 (5) Any other moneys transferred to the insurance
17 fund or made available to it for the purposes described
18 under this section, under this article or pursuant to any
19 other provisions of this code.

20 Subject to the provisions of any outstanding insurance
21 agreements entered into by the authority under this
22 section, the authority may enter into covenants or
23 agreements with respect to the insurance fund, and
24 establish accounts within the insurance fund which may
25 be used to implement the purposes of this article. If the
26 authority elects to establish separate accounts within the
27 insurance fund, the authority may allocate its revenues
28 and receipts among the respective accounts in any
29 manner the authority considers appropriate.

30 If the authority at any time finds that more money is
31 needed to keep the reserves of the insurance fund at an
32 adequate level, the authority, with the consent of the
33 chairman, shall send a written request to the Legisla-
34 ture for additional funds.

35 (b) The insurance fund shall be used for the following
36 purposes by the authority to financially assist projects
37 so long as such financial assistance will, as determined
38 by the authority, fulfill the public purposes of this
39 article:

40 (1) To insure the payment or repayment of all or any
41 part of the principal of, redemption or prepayment
42 premiums or penalties on, and interest on bonds or notes
43 whether issued under the provisions of this article or
44 under the Industrial Development and Commercial
45 Development Bond Act, the West Virginia Hospital
46 Finance Authority Act or, with respect to health care
47 facilities only, article thirty-three, chapter eight of this
48 code;

49 (2) To insure the payment or repayment of all or any
50 part of the principal of, redemption or prepayment
51 premiums or penalties on, and interest on any instru-
52 ment executed, obtained, or delivered in connection with

53 the issuance and sale of bonds or notes whether under
54 the provisions of this article or under the Industrial
55 Development and Commercial Development Bond Act,
56 the West Virginia Hospital Finance Authority Act or,
57 with respect to health care facilities only, article thirty-
58 three, chapter eight of this code;

59 (3) To insure the payment or repayment of all or any
60 part of the principal of, prepayment premiums or
61 penalties on, and interest on any form of debt instru-
62 ment entered into by an enterprise, public body or
63 authority of the state with a financial institution,
64 including, but not limited to, banks, insurance compan-
65 ies and other institutions in the business of lending
66 money, which debt instruments shall include, but not be
67 limited to, instruments relating to loans for working
68 capital and to the refinancing of existing debt: *Provided,*
69 That nothing contained in this subsection or any other
70 provision of this article shall be construed as permitting
71 the authority to insure the refinancing of existing debt
72 except when such insurance will result in the expansion
73 of the enterprise whose debt is to be refinanced or in
74 the creation of new jobs;

75 (4) To pay or insure the payment of any fees or
76 premiums necessary to obtain insurance, guarantees,
77 letters of credit or other credit support from any person
78 or financial institution in connection with financial
79 assistance provided by the authority under this section;
80 and

81 (5) To pay any and all expenses of the authority,
82 including, but not limited to:

83 (i) Any and all expenses for administrative, legal,
84 actuarial, and other services related to the operation of
85 the insurance fund; and

86 (ii) All costs, charges, fees, and expenses of the
87 authority related to the authorizing, preparing, print-
88 ing, selling, issuing, and insuring of bonds or notes
89 (including, by way of example, bonds or notes, the
90 proceeds of which are used to refund outstanding bonds
91 or notes) and the funding of reserves.

92 (c) The total aggregate amount of insurance from the
93 insurance fund with respect to the insured portions of
94 principal of bonds or notes or other instruments may not
95 exceed at any time an amount equal to five times the
96 balance in the insurance fund.

97 (d) The authority may, in its sole and absolute
98 discretion, set the premiums and fees to be paid to it
99 for providing financial assistance under this section. The
100 premiums and fees set by the authority shall be payable
101 in the amounts, at the time, and in the manner that the
102 authority, in its sole and absolute discretion, requires.
103 The premiums and fees need not be uniform among
104 transactions, and may vary in amount: (1) among
105 transactions, and (2) at different stages during the terms
106 of transactions.

107 (e) The authority may, in its sole and absolute
108 discretion, require the security it believes sufficient in
109 connection with its insuring of the payment or repay-
110 ment of any bonds, notes, debt or other instruments
111 described in subdivisions (1), (2), (3) and (4), subsection
112 (b) of this section.

113 (f) The authority may itself approve the form of any
114 insurance agreement entered into under this section or
115 may authorize the chairman or his designee to approve
116 the form of any such agreement. Any payment by the
117 authority under an agreement entered into by the
118 authority under this section shall be made at the time
119 and in the manner that the authority, in its sole and
120 absolute discretion, determines.

121 (g) The obligations of the authority under any insu-
122 rance agreement entered into pursuant to this article
123 shall not constitute a debt or a pledge of the faith and
124 credit or taxing powers of this state or of any county,
125 municipality or any political subdivision of this state for
126 the payment of any amount due thereunder or pursuant
127 thereto, but the obligations evidenced by such insurance
128 agreement shall be payable solely from the funds
129 pledged for their payment. All such insurance agree-
130 ments shall contain on the face thereof a statement to
131 the effect that such agreements and the obligations

132 evidenced thereby are not debts of the state or any
133 county, municipality or political subdivision thereof but
134 are payable solely from funds pledged for their pay-
135 ment.

§31-15-9. Bonds and notes issued pursuant to this article.

1 (a) The authority may issue its bonds or notes to fulfill
2 the purposes set forth in this article.

3 (b) The authority may issue renewal notes to pay notes
4 and, if it considers refunding expedient, may refund or
5 refund in advance, bonds or notes, whether or not
6 originally issued by the authority, by the issuance of new
7 bonds or notes.

8 (c) Except as may otherwise be expressly provided by
9 the authority, every issue of its notes or bonds shall be
10 special obligations of the authority, payable solely from
11 the property, revenues or other sources of or available
12 to the authority pledged therefor.

13 (d) The bonds and the notes shall be authorized by the
14 authority pursuant to section ten of this article, and
15 shall be secured, be in such denominations, may bear
16 interest at such rate or rates, be in such form, either
17 coupon or registered, carry such registration privileges,
18 be payable in such medium of payment and at such
19 place or places and such time or times and be subject
20 to such terms of redemption as the authority may
21 authorize. The bonds and notes of the authority may be
22 sold by the authority, at public or private sale, at or not
23 less than the price the authority determines. The bonds
24 and notes shall be executed by manual or facsimile
25 signature by the chairman of the board, and the official
26 seal of the authority or a facsimile thereof shall be
27 affixed to or printed on each bond and note and attested,
28 manually or by facsimile signature, by the secretary of
29 the board, and any coupons attached to any bond or note
30 shall bear the manual or facsimile signature of the
31 chairman of the board. In case any officer whose
32 signature, or a facsimile of whose signature, appears on
33 any bonds, notes or coupons ceases to be such officer
34 before delivery of such bonds or notes, such signature
35 or facsimile is nevertheless sufficient for all purposes

36 the same as if he had remained in office until such
37 delivery; and, in case the seal of the authority has been
38 changed after a facsimile has been imprinted on such
39 bonds or notes, such facsimile seal will continue to be
40 sufficient for all purposes.

§31-15-10. Approval by authority.

1 (a) To implement the powers and authority conferred
2 upon it by this article, the board of the authority may
3 adopt a resolution pursuant to which it shall:

4 (1) Specify and describe the project;

5 (2) Generally describe the public purpose to be served
6 and the financing transaction to be accomplished under
7 this article;

8 (3) Specify the maximum principal amount of any
9 bonds or notes to be issued by the authority, the
10 maximum principal amount of the loan, and the amount
11 of insurance, if any, to be provided by the authority; and

12 (4) Impose any terms or conditions on the issuance of
13 notes or bonds, the making of a loan or the provision of
14 insurance that the authority deems appropriate.

15 (b) The board of the authority may, by resolution, or
16 may delegate to the chairman or other designee the
17 authority to, specify, prescribe, determine, provide for
18 and approve such matters, details, forms, documents or
19 procedures as the authority deems appropriate to the
20 making of a loan, the authorization, sale, issuance,
21 security, delivery, or payment of or for bonds or notes,
22 or the authority's insurance of bonds, notes, loans or
23 other instruments, including, without limitation, the
24 rate or rates of interest and any security for the loan
25 or insurance.

26 (c) The resolution adopted pursuant to this section is
27 administrative in nature, is not subject to procedures
28 required for legislative acts, and is not subject to
29 referendum.

30 (d) In any suit, action, or proceeding involving the
31 validity or enforceability of any bonds or notes issued,
32 loan made, or insurance extended by the authority

33 under this article or any security therefor, any finding
34 by the authority as to the public purpose of any actions
35 taken under this article and the appropriateness of those
36 actions to serve the public purpose shall be conclusive.

37 (e) Any resolution authorizing the issuance of bonds
38 or notes shall provide that such bonds or notes shall
39 contain a recital that they are issued pursuant to this
40 article, which recital shall be conclusive evidence of
41 their validity and of the regularity of their issuance.

§31-15-11. Trustee for bondholders; contents of trust agreement; pledge or assignment of revenues.

1 For bonds or notes issued pursuant to the provisions
2 of this article, in the discretion of the authority, any
3 bonds or notes, including refunding bonds or notes
4 issued by the authority, may be secured by a trust
5 agreement between the authority and a corporate
6 trustee, which trustee may be any bank or trust
7 company within or without the state. Any such trust
8 agreement may contain such binding covenants with the
9 holders of such bonds or notes as to any matter or
10 provisions as are deemed necessary or advisable to the
11 authority to enhance the marketability and security of
12 such bonds or notes and may also contain such other
13 provisions with respect thereto as the authority may
14 authorize and approve. Any resolution adopted by the
15 authority or any trust agreement may contain a pledge
16 or assignment of revenues to be received in connection
17 with the financing.

§31-15-12. Use of funds by authority; restrictions thereon relating to projects.

1 All moneys, properties and assets acquired by the
2 authority, whether as proceeds from the sale of bonds
3 or notes or as revenues or otherwise, shall be held by
4 it in trust for the purposes of carrying out its powers
5 and duties and shall be used and reused in accordance
6 with the purposes and provisions of this article. Such
7 moneys shall at no time be commingled with other
8 public funds. Such moneys, except as otherwise pro-
9 vided in any resolution authorizing the issuance of bonds

10 or notes or in any trust agreement securing the same,
11 or except when invested pursuant to this article, shall
12 be kept in appropriate depositories and secured as
13 provided and required by law. The resolution authoriz-
14 ing the issuance of such bonds or notes of any issue or
15 the trust agreement securing such bonds or notes shall
16 provide that any officer to whom, or any banking
17 institution or trust company to which, such moneys are
18 paid, shall act as trustee of such moneys and hold and
19 apply them for the purposes hereof, subject to the
20 conditions this article and such resolution or trust
21 agreement provide.

§31-15-13. Refunding bonds or notes.

1 Any bonds or notes issued by the authority or any
2 other public body or authority of the state pursuant to
3 the provisions of this article or any other provision of
4 this code and at any time outstanding may at any time
5 and from time to time be refunded by the authority by
6 the issuance of its refunding bonds or notes in such
7 amount as it may deem necessary to refund the
8 principal of the bonds or notes so to be refunded,
9 together with any unpaid interest thereon; to provide
10 additional funds for the purposes of the authority; and
11 to pay any premiums and commissions necessary to be
12 paid in connection therewith. Any such refunding may
13 be effected whether the bonds or notes to be refunded
14 shall have then matured or shall thereafter mature,
15 either by sale of the refunding bonds or notes and the
16 application of the proceeds thereof for the redemption
17 of the bonds or notes to be refunded thereby or by
18 exchange of the refunding bonds or notes for the bonds
19 or notes to be refunded thereby. Such refunding bonds
20 or notes shall be issued in conformance with the
21 provisions of sections nine and ten of this article.

§31-15-14. Obligations of authority undertaken pursuant to this article not debt of state, county, municipality or any political subdivision.

1 Bonds and notes, including refunding bonds and notes,
2 issued under the authority of this article and any
3 coupons in connection therewith, and any other obliga-

4 tions undertaken by the authority pursuant to this
5 article, shall not constitute a debt or a pledge of the faith
6 and credit or taxing power of this state or of any county,
7 municipality or any other political subdivision of this
8 state, and the holders and owners thereof shall have no
9 right to have taxes levied by the Legislature or the
10 taxing authority of any county, municipality or any
11 other political subdivision of this state for the payment
12 of the principal thereof or interest thereon, but such
13 bonds, notes and other obligations shall be payable solely
14 from revenues and funds pledged for their payment as
15 authorized by this article unless the notes are issued in
16 anticipation of the issuance of bonds or the notes are
17 refunded by refunding bonds issued under the authority
18 of this article, which bonds or refunding bonds shall be
19 payable solely from revenues and funds pledged for
20 their payment as authorized by this article. All such
21 bonds and notes, and all documents evidencing any other
22 obligation, shall contain on the face thereof a statement
23 to the effect that the bonds, notes or such other
24 obligation as to both principal and interest, are not debts
25 of the state or any county, municipality or political
26 subdivision thereof, but are payable solely from re-
27 venues and funds pledged for their payment.

§31-15-15. Negotiability of bonds and notes issued pursuant to this article.

1 Whether or not the bonds or notes issued pursuant to
2 this article are of such form or character as to be
3 negotiable instruments under the Uniform Commercial
4 Code, such bonds or notes are negotiable instruments
5 within the meaning of and for all the purposes of the
6 Uniform Commercial Code, subject only to the provi-
7 sions of the bonds or notes for registration.

§31-15-16. Bonds and notes issued pursuant to this article; legal investments.

1 The provisions of sections nine and ten, article six,
2 chapter twelve of this code to the contrary notwithstand-
3 ing, the bonds and notes issued pursuant to the provi-
4 sions of this article are securities in which all public
5 officers and bodies of this state, including the West

6 Virginia state board of investments, all municipalities
7 and other political subdivisions of this state, all
8 insurance companies and associations and other persons
9 carrying on an insurance business, including domestic
10 for life and domestic not for life insurance companies,
11 all banks, trust companies, societies for savings,
12 building and loan associations, savings and loan associ-
13 ations, deposit guarantee associations and investment
14 companies, all administrators, guardians, executors,
15 trustees and other fiduciaries and all other persons
16 whatsoever who are authorized to invest in bonds or
17 other obligations of the state may properly and legally
18 invest funds, including capital, in their control or
19 belonging to them.

§31-15-17. Exemption from taxation.

1 The exercise of the powers granted to the authority
2 by this article will be in all respects for the benefit of
3 the people of the state for the improvement of their
4 health, safety, convenience and welfare and is a public
5 purpose. As the operation and maintenance of projects
6 financed under this article will constitute the perfor-
7 mance of essential governmental functions, the authority
8 shall not be required to pay any taxes or assessments
9 upon any property acquired or used by the authority or
10 upon the income therefrom. All bonds and notes of the
11 authority, and all interest and income thereon, shall be
12 exempt from all taxation by this state and any county,
13 municipality, political subdivision or agency thereof,
14 except inheritance taxes.

§31-15-18. Personal liability; persons executing bonds or notes issued pursuant to this article.

1 Neither the members or officers of the authority or
2 of any authority, agency or office, nor any person
3 executing the bonds or notes issued pursuant to the
4 provisions of this article, shall be liable personally on
5 such bonds or notes or be subject to any personal
6 liability or accountability by reason of the issuance
7 thereof.

§31-15-19. Cumulative authority as to powers conferred; applicability of other statutes and charters; bonds and notes issued pursuant to this article.

1 The provisions of this article relating to the making
2 of loans and to the issuance of bonds and notes shall be
3 construed as granting cumulative authority for the
4 exercise of the various powers herein conferred, and
5 neither the powers nor any bonds or notes issued
6 hereunder shall be affected or limited by any other
7 statutory or charter provision now or hereafter in force,
8 other than as may be provided in this article, it being
9 the purpose and intention of this article to create full,
10 separate and complete additional powers. The various
11 powers conferred herein may be exercised independ-
12 ently and notwithstanding that no bonds or notes are
13 issued hereunder.

§31-15-20. Authority of the board of investments.

1 The board of investments shall, under the provisions
2 of this article, invest moneys, securities and other assets
3 of the special account for the common investment of
4 state funds designated as the state account within the
5 special investment fund designated as the consolidated
6 fund established under the provisions of subsection (b),
7 section eight, article six, chapter twelve of this code as
8 a revolving loan fund with the authority, to enable the
9 authority to make loans approved by the authority and
10 to be funded from such consolidated fund in an amount
11 which shall not at anytime exceed one hundred fifty
12 million dollars in the aggregate principal amount
13 outstanding. With respect to loans funded under this
14 article through the consolidated fund of the state, such
15 loans shall be made in the name of the consolidated fund
16 by the authority.

§31-15-21. Loan and insurance application requirements.

1 Prior to the loaning of any funds to an industrial
2 development agency or an enterprise for a project or the
3 insuring of any bonds, notes, loans or other instruments
4 pursuant to section eight of this article, the authority
5 shall receive from such agency or enterprise an appli-

- 6 cation in such form as adopted by the authority for
7 either the loan or the insurance.

§31-15-22. Documentary materials concerning trade secrets; commercial or financial information; or confidentiality.

1 Any documentary material or data made or received
2 by the authority for the purpose of furnishing assistance
3 to a business, to the extent that such material or data
4 consists of trade secrets or commercial or financial
5 information regarding the financial position or business
6 operation of such business, shall not be considered
7 public records and shall be exempt from disclosure
8 pursuant to the provisions of chapter twenty-nine-b of
9 this code. Any discussion or consideration of such trade
10 secrets or commercial or financial information may be
11 held by the authority in executive session closed to the
12 public, notwithstanding the provisions of article nine-a,
13 chapter six of this code: *Provided*, That the authority
14 shall make publicly available the following information
15 regarding executed loans or its provision of insurance:
16 (1) The name of the debtor, (2) location(s) of the project,
17 (3) amount of the authority loan or financial assistance
18 provided by the insurance fund, (4) the purpose of the
19 loan or financial assistance, (5) the term, rate and
20 interest of the loan, and (6) the fixed assets which serve
21 as security for the loan or insurance provided.

§31-15-23. Economic development fund.

1 The economic development fund, to which shall be
2 credited any appropriation made by the Legislature to
3 the authority, any funds which the authority is autho-
4 rized to receive under any provision of this code, other
5 funds which the board directs to be deposited into the
6 fund, and such other deposits as are provided for in this
7 section, is hereby continued in the state treasury as a
8 special account.

9 The authority may requisition from the fund such
10 amounts as are necessary to provide for the payment of
11 the administrative expenses of this article.
12 Notwithstanding any other provision of this article,
13 whenever the authority determines it to be necessary to

14 purchase at a foreclosure sale any project pursuant to
15 subdivision (t), section six of this article, it may
16 requisition from the fund such amount as is necessary
17 to pay the purchase price thereof.

18 The authority shall requisition from the fund such
19 amounts as are allocated and appropriated for loans to
20 industrial development agencies or enterprises for
21 projects. As loans to industrial development agencies or
22 enterprises are repaid to the authority pursuant to the
23 terms of mortgages and other agreements, the authority
24 shall pay such amounts into the fund, consistent with the
25 intent of this article that the fund shall operate as a
26 revolving fund whereby all appropriations and pay-
27 ments made thereto may be applied and reapplied for
28 the purposes of this article. Revenues deposited into the
29 fund may be used to make payments of interest and
30 principal and may be pledged as security for bonds,
31 security interests or notes issued by the authority
32 pursuant to this article.

33 Whenever the authority determines that the balance
34 in the fund is in excess of the immediate requirements
35 for loans, it may request that such excess be invested
36 until needed for loan purposes, in which case such excess
37 shall be invested in a manner consistent with the
38 investment of other temporary state funds. Interest
39 earned on any money invested pursuant to this section
40 shall be credited to the fund.

41 If the authority determines that funds held in the fund
42 are in excess of the amount needed to carry out the
43 purposes of this article, it may take such action as is
44 necessary to release such excess and transfer it to the
45 general fund of the state treasury.

§31-15-24. Transfer of state property to the authority.

1 The governor is authorized to provide for the transfer
2 to the authority of the use, possession and control of such
3 real or personal property of the state as he may from
4 time to time deem useful to the authority in the conduct
5 of its activities as authorized by this article.

§31-15-25. Validity of any pledge, mortgage, deed of trust or security instrument.

1 It is the intention hereof that any pledge, mortgage,
2 deed of trust or security instrument made by or for the
3 benefit of the authority shall be valid and binding
4 between the parties from the time the pledge, mortgage,
5 deed of trust or security instrument is made; and that
6 the moneys or property so pledged, encumbered,
7 mortgaged or entrusted shall immediately be subject to
8 the lien of such pledge, mortgage, deed of trust or
9 security instrument without any physical delivery
10 thereof or further act.

§31-15-26. Money of the authority.

1 All money accruing to the authority from whatever
2 source derived, except legislative appropriations, shall
3 be collected and received by the treasurer of the
4 authority, who shall pay it into the state treasury in the
5 manner required by section two, article two, chapter
6 twelve of this code, which shall be credited to the
7 appropriate fund of the authority.

§31-15-27. Conflict of interest; when contracts void.

1 No member, officer or employee of the authority shall
2 either directly or indirectly be a party to or interested
3 in any manner in any contract or agreement with the
4 authority whereby liability or indebtedness against or to
5 the authority is in any manner created. Any contract or
6 agreement made in violation of the provisions of this
7 section shall be void and no action thereon shall be
8 maintained against the authority.

§31-15-28. Agreement with federal agencies not to alter or limit powers of authority.

1 The state hereby pledges to and agrees with each
2 federal agency that, if such agency constructs or loans
3 or contributes any funds for any project, the state will
4 not alter or limit the rights and powers of the authority
5 in any manner which would be inconsistent with the due
6 performance of any agreement between the authority
7 and such federal agency and that the authority shall
8 continue to have and exercise all powers granted for

9 carrying out the purposes of this article for so long as
10 necessary.

§31-15-29. Audits.

1 As soon as possible after the close of each fiscal year,
2 the authority shall make an annual report of its
3 activities for the preceding fiscal year to the governor
4 and the Legislature. Each such report shall set forth a
5 complete operating and financial statement covering the
6 authority's operations during the preceding fiscal year.
7 The authority shall cause an audit of its books and
8 accounts to be made at least once each fiscal year by
9 certified public accountants and the cost thereof may be
10 treated as a part of the cost of construction or of
11 operations of its projects.

§31-15-30. Projects not to be considered public improvements.

1 No project, enterprise or business facility which
2 conducts as its primary activity a manufacturing
3 process or other nongovernmental or nonpublic activity
4 may be deemed to be a "public improvement" within the
5 meaning of the provisions of article five-a, chapter
6 twenty-one of this code.

§31-15-31. Foreign trade zones; authority approval.

1 Any public corporation located in the state is hereby
2 authorized to apply for, develop, maintain and operate
3 a foreign trade zone in the state pursuant to and in
4 accordance with all applicable provisions of federal law:
5 *Provided*, That any public corporation desiring to apply
6 for or develop a foreign trade zone must first receive the
7 approval of the authority.

§31-15-32. Severability.

1 If any section, subsection, subdivision, subparagraph,
2 sentence or clause of this article is adjudged to be
3 unconstitutional or invalid, such adjudication shall not
4 affect the validity of the remaining portions of this
5 article, and, to this end, the provisions of this article are
6 hereby declared to be severable.

§31-15-33. Construction.

- 1 The provisions of this article are remedial and shall
- 2 be liberally construed and applied so as to promote the
- 3 purposes set out in section three of this article.

CHAPTER 55

(Com. Sub. for H. B. 2326—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact sections six, twenty-six and twenty-nine, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section thirty; to amend and reenact section two, article two-e of said chapter; to further amend said article by adding thereto three new sections, designated sections three-a, three-b and seven; to amend and reenact sections four, eighteen-a and eighteen-c, article five of said chapter; to amend and reenact sections two, four, five-a, six-a, seven, eight, nine, ten, thirteen-b and twenty-two, article nine-a of said chapter; to amend and reenact section one, article twenty of said chapter; to further amend said article by adding thereto a new section, designated section nine; to amend and reenact sections one, two, five-a, five-b, five-c and eight-a, article four, chapter eighteen-a of said code; and to further amend said article by adding thereto a new section, designated section eight-d, all relating to the curriculum and instructional improvement; providing for the granting of certificates of proficiency to eligible high school graduates; providing for regional educational service agencies to conduct a study for performing certain services and functions for public schools and school districts in the region and protecting certain employees; requiring each regional educational service agency to evaluate school services in its region and requiring each school to evaluate its regional educational service agency services; providing

for awarding competitive grants to schools to implement exemplary and innovative programs to improve instruction; providing for establishment of a statewide curriculum technology resource center to facilitate access to and expedite acquisition of materials; providing for regional educational service agencies to serve as depository and distribution centers for curriculum technology resource materials; clarifying intent of readiness evaluations; providing criteria for use in the development of an evaluation model; requiring a criterion referenced test to be given to first and second graders in reading and math with third and fourth graders being tested in reading, composition and math; providing for honors and advanced placement courses in grades nine through twelve by school year one thousand nine hundred ninety—ninety-one; defining honors and advanced placement; establishing curriculum offered in honors and advanced placement and providing for the instruction thereof; providing for the phase-in of honors and advanced placement; providing that certain students in grades nine through twelve may be served in honors and advanced placement; requiring state board of education to designate an employee who is an expert in financial assistance to inform students of the availability of financial assistance to attend college; providing for high quality basic skills development and remediation in the public schools; changing the time requirement for when a county board must hold a public hearing concerning the preliminary operating budget; providing for additional compensation for elementary teachers whose number of pupils have exceeded the maximum class size; creating the early childhood program to replace the transitional or developmental kindergarten program; revising the definitions of professional instructional personnel, adjusted enrollment and basic resources per pupil; providing that attrition, early retirement and other methods shall be utilized before implementing reduction in force procedures; permitting waiver of ratio of foundation allowance for professional educators and service personnel to net enrollment for a limited period; changing the gradual phase-in of the teachers retirement factor

schedule from three and one half percent to the full fifteen percent; increasing school bus replacement cycle to ten years; increasing the foundation allowance for administrative cost to provide additional funding for regional educational service agencies; increasing the allowance for current expense; resetting base in foundation allowance to improve instructional programs; increasing the minimum amount of funds allocated to each county on the basis of adjusted enrollment from one hundred thousand to one hundred fifty thousand; changing the distribution of funds recaptured due to adjusted enrollment in allowances for remedial and accelerated education programs and salary equity; eliminating certain standards for education quality; revising exceptional children program and defining exceptional gifted; requiring caseload review of various programs in certain grades; establishing requirements for in-field master's degrees earned after a certain date; increasing by five percent the state minimum salary schedule for teachers effective the second half of the employment term and establishing in-field master's salary schedule; removing the limits placed on benefits that counties may provide for teachers and service personnel; requiring certain study relating to service personnel salaries; increasing the service personnel state minimum pay scale to reflect an approximate aggregate five percent increase effective the second half of the employment term; and providing for consolidation of services and seniority rights for administrative personnel.

Be it enacted by the Legislature of West Virginia:

That sections six, twenty-six and twenty-nine, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section thirty; that section two, article two-e of said chapter be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections three-a, three-b and seven; that sections four, eighteen-a and eighteen-c, article five of said chapter be amended and reenacted; that sections two,

four, five-a, six-a, seven, eight, nine, ten, thirteen-b and twenty-two, article nine-a of said chapter be amended and reenacted; that section one, article twenty of said chapter be amended and reenacted; that said article twenty be further amended by adding thereto a new section, designated section nine; that sections one, two, five-a, five-b, five-c and eight-a, article four, chapter eighteen-a of said code be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section eight-d, all to read as follows:

Chapter

18. Education.

18A. School Personnel.

CHAPTER 18. EDUCATION.

Article

2. State Board of Education.

2E. High Quality Education Programs.

5. County Board of Education.

9A. Public School Support.

20. Education of Exceptional Children.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6. Training of teachers; accreditation, classification and standardization of schools; standards for degrees and diploma.

§18-2-26. Establishment of multicounty regional educational service agencies; purposes; authority to implement regional services.

§18-2-29. Competitive grant program for selected schools and school districts.

§18-2-30. Statewide curriculum technology resource center established; distribution of materials by regional educational service agencies.

§18-2-6. Training of teachers; accreditation, classification and standardization of schools; standards for degrees and diploma.

- 1 (a) The education of teachers in the state shall be
- 2 under the general direction and control of the state
- 3 board of education after consultation with the board of
- 4 regents, which shall, through the state superintendent
- 5 of schools, exercise supervisory control over teacher
- 6 preparation including (1) those programs in all institu-
- 7 tions of higher education, including student teaching in
- 8 the public schools; and (2) any alternative training
- 9 programs leading to licensure, in accordance with

10 standards for program approval stated in writing by the
11 board. Such standards shall include a provision for the
12 study of multicultural education.

13 As used in this section, multicultural education means
14 the study of the pluralistic nature of American society
15 including its values, institutions, organizations, groups,
16 status positions and social roles.

17 (b) To give prospective teachers the teaching expe-
18 rience needed to demonstrate competence, as a prereq-
19 uisite to licensure, the state board of education may
20 enter into an agreement with county boards of education
21 for the use of the public schools. Such agreement shall
22 recognize student teaching as a joint responsibility of
23 the teacher preparation institution and the cooperating
24 public schools and shall include (1) the minimum
25 qualifications for the employment of public school
26 teachers selected as supervising teachers; (2) the
27 remuneration to be paid public school teachers by the
28 state board, in addition to their contractual salaries, for
29 supervising student teachers; and (3) minimum stand-
30 ards to guarantee adequacy of facilities and program of
31 the public school selected for student teaching. The
32 student teacher, under the direction and supervision of
33 the supervising teacher, shall exercise the authority of
34 a substitute teacher.

35 Institutions of higher education approved for teacher
36 preparation may cooperate with each other and with one
37 or more county boards of education in the organization
38 and operation of centers to provide selected phases of the
39 teacher preparation program such as student teaching
40 or internship programs, instruction in methodology,
41 seminar programs for college students, first year
42 teachers and supervising teachers.

43 Such institutions of higher education and participat-
44 ing county boards of education may budget and expend
45 funds for the operation of such centers through pay-
46 ments to the appropriate fiscal office of the county
47 designated by mutual agreement of participating county
48 school boards and higher education institutions to serve
49 as the administering agency of the center.

50 The provisions of this section shall not be construed
51 to require the discontinuation of an existing student
52 teacher training center or school which meets the
53 standards of the state board of education.

54 All institutions of higher education approved for
55 teacher preparation in the school year of one thousand
56 nine hundred sixty-two—sixty-three shall continue to
57 hold that distinction so long as they meet the minimum
58 standards for teacher preparation. Nothing contained
59 herein shall infringe upon the rights granted to any
60 institution by charter given according to law previous
61 to the adoption of this code.

62 (c) Notwithstanding any other provision of this article
63 to the contrary, the state board of education is autho-
64 rized to develop alternative training programs leading
65 to licensure in accordance with rules and regulations
66 adopted by the state board of education after consulta-
67 tion with the board of regents: *Provided*, That no teacher
68 shall be permanently certified who has not completed a
69 core curriculum, as determined by the state board after
70 consultation with the board of regents, in an approved
71 teacher preparation or improvement program of an
72 accredited institution of higher education.

73 The state board shall also develop and implement a
74 beginning teacher internship program by the first day
75 of July, one thousand nine hundred ninety.

76 (d) The state board shall make rules for the accred-
77 itation, classification and standardization of all schools
78 in the state, except institutions of higher education, and
79 shall determine the minimum standards for the grant-
80 ing of diplomas and certificates of proficiency by those
81 schools. Not later than the school year one thousand nine
82 hundred ninety—ninety-one, certificates of proficiency
83 including specific information regarding the graduate's
84 skills, competence, and readiness for employment or
85 honors and advanced education shall be granted, along
86 with the diploma, to every eligible high school graduate.
87 No institution of less than collegiate or university status
88 may grant any diploma or certificate of proficiency on

89 any basis of work or merit below the minimum stand-
90 ards prescribed by the state board.

91 No charter or other instrument containing the right
92 to issue diplomas or certificates of proficiency shall be
93 granted by the state of West Virginia to any institution
94 or other associations or organizations of less than
95 collegiate or university status within the state until the
96 condition of granting or issuing such diplomas or other
97 certificates of proficiency has first been approved in
98 writing by the state board.

**§18-2-26. Establishment of multicounty regional educa-
tional service agencies; purposes; authority to
implement regional services.**

1 (a) In order to consolidate and administer more
2 effectively existing educational programs and services
3 so individual districts will have more discretionary
4 moneys for educational improvement and in order to
5 equalize and extend educational opportunities, the state
6 board of education shall establish multicounty regional
7 educational service agencies for the purpose of provid-
8 ing high quality, cost effective educational programs
9 and services to the county school systems, and shall
10 make such rules as may be necessary for the effective
11 administration and operation of such agencies.

12 (b) In furtherance of these purposes, it is the duty of
13 the board of directors of each regional educational
14 service agency to continually explore possibilities for the
15 delivery of services on a regional basis which will
16 facilitate equality in the educational offerings among
17 counties in its service area, permit the delivery of high
18 quality educational programs at a lower per student
19 cost, strengthen the cost effectiveness of education
20 funding resources, reduce administrative and/or opera-
21 tional costs, including the consolidation of administra-
22 tive, coordinating and other county level functions into
23 region level functions, and promote the efficient
24 administration and operation of the public school
25 systems generally.

26 Technical, operational, programmatic or professional
27 services would be among the types of services approp-
28 riate for delivery on a regional basis.

29 (c) In addition to performing the services and func-
30 tions required by the provisions of this or any other
31 section of this code, a regional educational service
32 agency may implement regional programs and services
33 by a majority vote of its board of directors. When said
34 vote is not unanimous, the board of directors shall file
35 a plan for the service or program delivery with the state
36 board describing the program or service, the manner of
37 delivery and the projected savings and/or the improved
38 quality of the program or service. The state board shall
39 promulgate rules requiring a county board that declines
40 to participate in such programs or services to show just
41 cause for not participating and the estimated savings
42 accruing to the county therefrom. If a county board fails
43 to show that savings will accrue to the county or that
44 the quality of the program will be significantly and
45 positively affected as a result of its decision not to
46 participate, the state board shall withhold from the
47 county's foundation allowance for administrative cost
48 the lesser of the amount of the estimated savings or the
49 allocation for the county's foundation allowance for
50 administrative cost.

51 (d) The state board, in conjunction with the various
52 regional educational service agencies, shall develop an
53 effective model for the regional delivery of instruction
54 in subjects where there exists low student enrollment or
55 a shortage of certified teachers or where such delivery
56 method substantially improves the quality of an instruc-
57 tional program. Such model shall incorporate an
58 interactive electronic classroom approach to instruction.
59 To the extent funds are appropriated or otherwise
60 available, county boards or regional educational service
61 agencies may adopt and utilize the model for the
62 delivery of such instruction.

63 (e) Each regional educational service agency shall
64 conduct a study setting forth how the following services
65 and functions may be performed by the agency for
66 public schools and school districts within the region
67 without terminating the employment of personnel
68 employed by school districts prior to the effective date
69 of this subsection: Accounting, purchasing, food service,

70 transportation, delivery of high cost services to low
71 incidence student populations, audiovisual material
72 distribution, facilities planning, federal program
73 coordination, personnel recruiting and an integrated
74 regional computer information system. On or before the
75 tenth day of January, one thousand nine hundred ninety,
76 each regional educational service agency shall submit
77 the study to the state board, to the standing committees
78 on education and finance of the West Virginia Senate
79 and House of Delegates, and to the secretary of
80 education and the arts: *Provided*, That in the event such
81 study is implemented those individuals employed prior
82 to the effective date thereof shall not have their
83 employment terminated as a result of the study.

84 (f) Each regional educational service agency shall
85 submit a report and evaluation of the services provided
86 and utilized by the schools within each respective
87 region. Furthermore, each school shall submit an
88 evaluation of the services provided by the regional
89 educational service agency, which shall include an
90 evaluation of the regional educational service agency
91 program, suggestions as to how to improve utilization
92 and the individual school's plan as to development of
93 new programs and enhancement of existing programs.
94 The reports shall be due by the first day of January of
95 each year commencing with the year one thousand nine
96 hundred ninety-one and shall be made available to the
97 state board of education, standing committees on
98 education of the West Virginia Senate and House of
99 Delegates and to the secretary of education and the arts.

100 (g) A regional board shall be empowered to receive
101 and disburse funds from the state and federal govern-
102 ments, member counties, gifts and grants.

**§18-2-29. Competitive grant program for selected schools
and school districts.**

1 The state board shall establish no later than the school
2 year one thousand nine hundred eighty-nine—ninety, a
3 competitive grant program whereby schools may be
4 awarded grants to implement exemplary and innovative
5 programs designed to improve instruction.

6 Applications for awarding competitive grants which
7 include one or more of the following considerations shall
8 be given priority: (a) Whether local community resour-
9 ces have been committed to work in partnership with
10 the school to implement the program, (b) whether the
11 program involves extending the school year, (c) whether
12 the program is for remediation, (d) whether the proposal
13 will implement an early childhood program pursuant to
14 section eighteen-c, article five of this chapter, (e)
15 whether the proposal will implement a beginning
16 teacher assistance program, (f) whether the school has
17 probationary or nonapproval accreditation status, and,
18 (g) how the program will be evaluated based on
19 measurable performance criteria such as: Student
20 achievement gain; student attendance; teacher attend-
21 ance; parent participation; reduction in the amount of
22 paperwork required of teachers; and any other factor
23 promoting the attainment of full accreditation for the
24 school or the school district.

25 The state board shall promulgate rules which ensure
26 that the school or school district utilizes these funds
27 appropriately. The state board shall encourage the
28 donation of funds from private and other sources to
29 augment state funding for the program.

**§18-2-30. Statewide curriculum technology resource
center established; distribution of materials
by regional educational service agencies.**

1 There shall be established a statewide curriculum
2 technology resource center to facilitate access to, and
3 expedite the acquisition of, audiovisual materials to
4 assist in the continued enrichment of the school curric-
5 ulum. The state board shall designate the statewide
6 center. The legislative intent is that appropriations for
7 the said resource center be designated primarily for
8 supportive materials to be made available for use by
9 teachers: *Provided*, That no more than five percent of
10 the moneys allocated for fiscal year one thousand nine
11 hundred eighty-nine—ninety be used for capital outlay
12 and improvements on any structure used to house said
13 resource center. The center shall develop a program of
14 services for public school teachers in the fields of

15 curricular development, instructional resources and
16 technology. The center shall also undertake projects to
17 describe systematically and evaluate curriculum mate-
18 rials and instruction resources, provide for dissemina-
19 tion of software and programs to teachers, provide
20 leadership in the areas of instructional resources and
21 provide training to increase skills in the use of technol-
22 ogy and other instructional resources.

23 The center shall be a centralized purchasing agent for
24 audiovisual materials requested for use in the public
25 schools. The center shall utilize curriculum teams of
26 classroom teachers and other professional educators
27 representing all regional educational service agency
28 regions to assist in the materials selection process. The
29 center may obtain authorization to duplicate such
30 materials and may duplicate such materials when
31 duplication is justified by cost and need and when
32 appropriate authorization has been obtained. The center
33 shall maintain a central library of all original materials
34 duplicated and shall compile no later than the first day
35 of July, one thousand nine hundred ninety, a statewide
36 catalog of all audiovisual materials available. The center
37 shall make the statewide catalog accessible to teachers
38 through electronic or other means.

39 Each regional educational service agency shall serve
40 as a depository and distribution center for the audiov-
41 isual materials available to the public schools in its
42 region. Each regional educational service agency shall
43 survey audiovisual material currently held in the public
44 schools in its region and submit the list to the statewide
45 center for possible inclusion in the statewide catalog:
46 *Provided*, That nothing in this section shall be construed
47 to change ownership by any county board of any
48 materials which are included in the catalog. Whenever
49 the regional educational service agency receives a
50 request for material not listed in the statewide catalog,
51 the agency shall submit a request to the statewide center
52 for review by one of the curriculum teams and, if
53 appropriate, purchase and distribute the material.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-2. Statewide testing of educational progress program (WV-STEP); purposes, development and implementation of program.

§18-2E-3a. Honors and advanced placement programs.

§18-2E-3b. Placement advisory committee established.

§18-2E-7. Providing for high quality basic skills development and remediation in all public schools.

§18-2E-2. Statewide testing of educational progress program (WV-STEP); purposes, development and implementation of program.

1 (a) The state board shall establish a program for the
2 statewide testing of the educational progress of public
3 school students in attaining a high quality education,
4 hereinafter referred to as the WV-STEP program.

5 The WV-STEP program shall provide information to:

6 (1) Assess the overall academic progress of students,
7 including (i) identifying individual students' academic
8 weaknesses and readiness, and (ii) identifying students
9 who may need remediation;

10 (2) Assist the teacher in determining student
11 promotion;

12 (3) Compare achievement of students in West Virgi-
13 nia to achievement of students on a national basis;

14 (4) Assess the strengths and weaknesses of school
15 performance;

16 (5) Assess the effects of state and local educational
17 programs;

18 (6) Make decisions at the state and local level with
19 regard to educational matters, including (i) the need for
20 new or revised educational programs and the need to
21 terminate existing educational programs, (ii) overall
22 curriculum development and revision activities, and (iii)
23 teacher training and staff development activities; and

24 (7) Inform the public of the overall quality of educa-
25 tion in individual schools and school districts.

26 (b) The state board shall prepare detailed design
27 specifications for the WV-STEP program which ac-
28 complish the following:

29 (1) Take into account the state learning outcome
30 statements in the basic skill areas of reading, composi-
31 tion, mathematics and other subject areas as determined
32 by the state board; and

33 (2) Include testing of students' higher level cognitive
34 thinking in each subject area tested.

35 "Learning outcome statements" means statements
36 developed and adopted by the state board which for the
37 purposes of this article have been fully and properly
38 field tested to ensure their reliability and validity in
39 indicating the knowledge base and skills expected of
40 students for particular subject areas and which may be
41 used to measure indicators of statewide standards for
42 student progress in attaining a high quality education.

43 (c) The state board shall implement the WV-STEP
44 program as follows:

45 (1) Beginning in the school year one thousand nine
46 hundred ninety—ninety-one, and continuing thereafter:

47 (i) An evaluation designed to measure student read-
48 iness to begin the formal school curriculum shall be
49 administered to all kindergarten public school students.
50 Such evaluation shall be used solely to assist in making
51 policy decisions at the state and local levels with regard
52 to educational matters as outlined in subdivision six,
53 subsection (a) of this section, and shall not be used for
54 individual diagnostic or placement purposes.

55 (ii) An evaluation model for children in kindergarten,
56 first and second grades shall be developed by a
57 committee of teachers, parents and principals selected
58 by each regional educational service agency board
59 within each regional educational service agency. The
60 evaluation model shall be developed using the following
61 criteria:

62 (A) The model shall be based on the fact that kinder-
63 garden through second grade is educationally
64 continuous;

65 (B) The model shall allow for variability in the
66 achievement of children in kindergarten through second
67 grade;

68 (C) The model shall be applied continuously to reflect
69 assessment as a teaching tool;

70 (D) Information gathered by the evaluation model
71 shall be used to adapt curriculum and to provide
72 feedback to parents;

73 (E) The model shall include a measure of achievement
74 of the state learning outcomes.

75 The evaluation model, as developed by each regional
76 educational service agency committee, shall be made
77 available to the state board and to the legislative
78 oversight commission on education accountability by the
79 first day of January, one thousand nine hundred ninety;
80 and

81 (iii) A criterion referenced test measuring competen-
82 cies based on the learning outcome statements shall be
83 administered to all public school students in grades one
84 and two to measure their academic progress in reading
85 and mathematics; and

86 (iv) A criterion referenced test measuring competen-
87 cies based on the learning outcome statements shall be
88 administered to all public school students in grades
89 three and four to measure their academic progress in
90 reading, composition and mathematics.

91 The results of the tests shall be used to identify each
92 student's deficiencies, aid in determining instruction
93 needed by the student in achieving the statewide
94 standards established for the respective grade and assist
95 the teacher in determining student promotion.

96 (2) Beginning in the school year one thousand nine
97 hundred ninety-one—ninety-two, and continuing
98 thereafter:

99 (i) A criterion referenced test measuring competen-
100 cies based on the learning outcome statements for
101 reading, composition and mathematics in grade five
102 shall be administered to all public school students in
103 grade five. Each year thereafter, a criterion referenced
104 test for these subject areas shall be administered to

105 students in the next higher grade through grade eight;
106 and

107 (ii) Criterion referenced testing measuring competen-
108 cies based on the learning outcome statements in
109 additional subject areas shall be implemented as funds
110 are available on a schedule determined by the board.

111 (3) Beginning in the school year one thousand nine
112 hundred ninety—ninety-one, and continuing thereafter,
113 National Assessment of Educational Progress Program
114 tests shall be administered in academic areas at the
115 various grades designated by the National Assessment
116 of Educational Progress officials to provide comparisons
117 of West Virginia students to a national sample.

118 (d) The state board shall revise and update the
119 learning outcome statements as necessary and shall
120 determine a schedule for the annual administration of
121 the WV-STEP program tests. The state superintendent
122 is responsible for the overall development, implementa-
123 tion and monitoring of the program. The state board
124 may establish a pilot program to implement the WV-
125 STEP program prior to the required implementation
126 dates under subsection (c) of this section.

127 (e) Any student who is unable to take any of the tests
128 prescribed in this section because of absence from school
129 and provides school authorities with a valid reason for
130 such absence shall be given the missed test as soon as
131 possible following the student's return to school. An
132 exceptional child is subject to testing under the WV-
133 STEP program only to the extent specified in that
134 child's individualized education program (IEP).

135 (f) The parent or guardian of each student tested
136 under the WV-STEP program shall be notified in
137 writing of the students test score, along with the average
138 test score of all other students in the same grade at the
139 school. The state board shall promulgate rules for the
140 compilation of aggregate test scores by grade in such
141 manner as to permit the comparison of student perfor-
142 mance at different schools within and among the various
143 school districts. The test scores of all students taking the
144 test at each school shall be compiled by the district

145 pursuant to such rules, shall be made available for
146 public inspection and shall be included in the school and
147 county report cards under section four of this article.
148 However, no individual student's WV-STEP scores may
149 be disclosed to the public.

150 (g) The department of education shall take necessary
151 administrative action under section five of this article
152 to monitor and evaluate the curriculum and instruction
153 methods in each school district to ensure compliance
154 with the standards and purposes of this article.

§18-2E-3a. Honors and advanced placement programs.

1 (a) The purpose of this section is to provide honors and
2 advanced placement programs to meet the needs of
3 students who have the potential and desire to complete
4 curriculum more demanding than that offered in the
5 regular classroom for their current grade level. Honors
6 programs are those programs offering courses to expand
7 the academic content in a given program of study and
8 may include, but shall not be limited to, research and
9 in-depth studies, mentorships, content-focused seminars,
10 and extended learning outcomes instruction in the
11 content area. Advanced placement programs are those
12 programs offering classes which are advanced in terms
13 of content and performance expectations of those
14 normally available for the age/grade level of the student
15 and providing credit toward graduation and possible
16 college credit. Advanced placement classes also include
17 those recognized or offered by the college board,
18 postsecondary institutions and other recognized founda-
19 tions, corporations or institutions.

20 Curriculum approved under this section shall be
21 designed to advance the achievement of students in the
22 subject area or areas in which the student has achieved
23 at least two of the following three criteria: (a) Demon-
24 strated exceptional ability and interest through past
25 performance, (b) obtained the prerequisite knowledge
26 and skills to perform honors or advanced placement
27 work, and (c) recommended by the student's former or
28 present teachers. Honors and advanced placement
29 curriculum may include advanced placement courses

30 offered through the college board or other public or
31 private foundations, corporations, institutions, or
32 businesses whose courses are generally accepted as
33 leading to advanced placement or standing in a postse-
34 condary institution, accelerated instructional courses
35 offered via satellite and other courses and arrange-
36 ments, approved by the state board, which provide
37 students an opportunity to advance their learning above
38 that offered through the regular curriculum. To the
39 maximum extent possible, honors and advanced place-
40 ment courses shall be taught by a regular classroom
41 teacher. Such classroom teacher shall have adequate
42 knowledge in the subject area for the instruction of such
43 course. If a teacher, licensed by the state board, with
44 adequate knowledge in the advanced subject area is not
45 available, an adjunct teacher or other qualified person
46 may be employed, contracted for, or shared between
47 schools to instruct such course: *Provided*, That the
48 position shall be posted annually prior to the beginning
49 of the school year immediately following the school year
50 in which the adjunct teacher or other qualified person
51 is employed. The state board may grant waivers to
52 existing certification requirements for an adjunct
53 teacher or other qualified person who has an earned
54 bachelors degree and has demonstrated competence in
55 the subject to be taught.

56 (b) The honors and advanced placement curriculum
57 shall be phased-in in accordance with the following
58 schedule:

59 (1) Prior to the first day of June, one thousand nine
60 hundred eighty-nine, the state board shall establish a
61 program coordinated through the colleges and univer-
62 sities or some other entity, to provide training to
63 teachers in the instruction of honors and advanced
64 placement courses: *Provided*, That the state board shall
65 not establish an additional certification area for the
66 teaching of honors or advanced placement courses;

67 (2) To assist in the implementation of teacher training
68 for honors and advanced placement instruction, there
69 shall be an appropriation to the state board;

70 (3) On or before the first day of June, one thousand
71 nine hundred eighty-nine, and each year thereafter,
72 teachers shall be selected to teach honors and advanced
73 placement courses based upon the teacher's qualifica-
74 tions and academic interests and the needs of the
75 students. The county boards of education shall, if
76 necessary, make arrangements for the teachers to attend
77 a training program;

78 (4) Beginning in the school year one thousand nine
79 hundred ninety—ninety-one, each county board shall
80 provide in grades nine through twelve honors and
81 advanced placement courses as provided under subsec-
82 tion (a) of this section.

83 (c) The state board shall designate one employee who
84 is an expert in the area of higher education financial
85 aid, including, but not limited to, loans, grants and work
86 studies, to work on a full-time continuous basis with
87 high school counselors to ensure that all high school
88 students are informed of the availability of financial
89 assistance to attend college.

§18-2E-3b. Placement advisory committee established.

1 Gifted students in grades nine through twelve may be
2 served in honors and advanced placement programs as
3 described in section three of this article, pursuant to the
4 student's individualized education program and set
5 forth in the student's four year education plan. Prior to
6 the end of grade eight, a placement advisory committee
7 shall convene for the purpose of determining whether a
8 student should be placed in an honors or advanced
9 placement program pursuant to the placement criteria
10 set forth in section three-a of this article. Upon a
11 determination that placement in one of the programs
12 would be appropriate, the placement advisory commit-
13 tee shall write a four year education plan which will
14 designate honors or advanced placement courses and/or
15 offerings appropriate and agreed to by the school,
16 parent and student.

17 The four year education plan must be reviewed
18 annually and approved by the parent, student and
19 school. Schools shall be required to deliver the individ-

20 ualized education program as stated in the four year
21 education plan.

§18-2E-7. Providing for high quality basic skills development and remediation in all public schools.

1 The Legislature finds that teachers must be provided
2 the support, assistance and teaching tools necessary to
3 meet individual student instructional needs on a daily
4 basis in a classroom of students who differ in learning
5 styles, learning rates and in motivation to learn. The
6 Legislature further finds that attaining a solid foundation
7 in the basic skills of reading, composition and
8 arithmetic is essential for advancement in higher
9 education, occupational and avocational pursuits and
10 that computers are an effective tool for the teacher in
11 corrective, remedial and enrichment activities.
12 Therefore, the state board shall develop a plan which
13 specifies the resources to be used to provide services to
14 students in the earliest grade level and moving upward
15 as resources become available based on a plan developed
16 by each individual school team.

17 This plan must provide for standardization of computer
18 hardware and software for the purposes of achieving
19 economies of scale, facilitating teacher training, permitting
20 the comparison of achievement of students in
21 schools and counties utilizing the hardware and software,
22 and facilitating the repair of equipment, and
23 ensuring appropriate utilization of the hardware and
24 software purchased for remediation and basic skills
25 development.

26 The state board shall determine the computer hardware
27 and software specifications after input from
28 practicing teachers at the appropriate grade levels and
29 with the assistance of educational computer experts and
30 the curriculum technology resource center.

31 Computer hardware and software shall be purchased
32 either directly or through a lease purchase arrangement
33 pursuant to the provisions of article three, chapter five-
34 a of this code in the amount equal to anticipated
35 revenues being appropriated.

36 The state board shall develop and provide through the
37 state curriculum technology resource center a program
38 to ensure adequate teacher training, continuous teacher
39 support and updates.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

§18-5-18a. Maximum teacher-pupil ratio.

§18-5-18c. Early childhood programs; eligibility and standards for placement; guidelines and criteria.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

1 The board shall meet on the first Monday of January,
2 except that in the year one thousand nine hundred
3 eighty-two, and every year thereafter, the board shall
4 meet on the first Monday of July, and upon the dates
5 provided by law for the laying of levies, and at such
6 other times as the board may fix upon its records. At
7 any meeting as authorized above and in compliance with
8 the provisions of article four of this chapter, the board
9 may employ such qualified teachers, or those who will
10 qualify by the time of entering upon their duties,
11 necessary to fill existing or anticipated vacancies for the
12 current or next ensuing school year. At a meeting of the
13 board, on or before the first Monday of May, the
14 superintendent shall furnish in writing to the board a
15 list of those teachers to be considered for transfer and
16 subsequent assignment for the next ensuing school year;
17 all other teachers not so listed shall be considered as
18 reassigned to the positions held at the time of this
19 meeting. Such list of those recommended for transfer
20 shall be included in the minute record and the teachers
21 so listed shall be notified in writing, which notice shall
22 be delivered in writing, by certified mail, return receipt
23 requested, to such teachers' last-known addresses within
24 ten days following said board meeting, of their having
25 been so recommended for transfer and subsequent
26 assignment.

27 Special meetings may be called by the president or
28 any three members, but no business shall be transacted
29 other than that designated in the call.

30 In addition, a public hearing shall be held concerning
31 the preliminary operating budget for the next fiscal
32 year not less than ten days after such budget has
33 received tentative approval by the West Virginia board
34 of education and at such hearing reasonable time shall
35 be granted to any person or persons who wish to speak
36 regarding parts or all of such budget. Notice of such
37 hearing shall be published as a Class I legal advertise-
38 ment in compliance with the provisions of article three,
39 chapter fifty-nine of this code.

40 A majority of the members shall constitute the
41 quorum necessary for the transaction of official
42 business.

43 Board members may receive compensation at a rate
44 not to exceed eighty dollars per meeting attended. But
45 they shall not receive pay for more than fifty-two
46 meetings in any one fiscal year.

47 Members shall also be paid, upon the presentation of
48 an itemized sworn statement, for all necessary traveling
49 expenses, including all authorized meetings, incurred on
50 official business, at the order of the board.

51 When, by a majority vote of its members, a county
52 board of education deems it a matter of public interest,
53 such board may join the West Virginia school board
54 association and the national school board association,
55 and may pay such dues as may be prescribed by said
56 associations and approved by action of the respective
57 county boards. Membership dues and actual traveling
58 expenses of board members for attending meetings of
59 the West Virginia school board association may be paid
60 by their respective county boards of education out of
61 funds available to meet actual expenses of the members,
62 but no allowance shall be made except upon sworn
63 itemized statements.

§18-5-18a. Maximum teacher-pupil ratio.

1 County boards of education shall provide, by the

2 school year one thousand nine hundred eighty-three—
3 eighty-four, and thereafter, sufficient personnel, equip-
4 ment and facilities as will ensure that each first and
5 second grade classroom, or classrooms having two or
6 more grades that include either the first or second
7 grades shall not have more than twenty-five pupils for
8 each teacher of the grade or grades and shall not have
9 more than twenty pupils for each kindergarten teacher
10 per session, unless the state superintendent has excepted
11 a specific classroom upon application therefor by a
12 county board.

13 County boards shall provide by the school year one
14 thousand nine hundred eighty-four—eighty-five, and
15 continue thereafter, sufficient personnel, equipment and
16 facilities as will ensure that each third, fourth, fifth and
17 sixth grade classroom, or classrooms having two or more
18 grades that include one or more of the third, fourth, fifth
19 and sixth grades, shall not have more than twenty-five
20 pupils for each teacher of the grade or grades.

21 Beginning with the school year one thousand nine
22 hundred eighty-six—eighty-seven, and thereafter, no
23 county shall maintain a greater number of classrooms
24 having two or more grades that include one or more of
25 the grade levels referred to in this section than were in
26 existence in said county as of the first day of January,
27 one thousand nine hundred eighty-three: *Provided*, That
28 for the prior school years, and only if there is insuffi-
29 cient classroom space available in the school or county,
30 a county may maintain one hundred ten percent of such
31 number of classrooms.

32 During the school year one thousand nine hundred
33 eighty-four—eighty-five, and thereafter, the state
34 superintendent is authorized, consistent with sound
35 educational policy, (a) to permit on a statewide basis, in
36 grades four through six, more than twenty-five pupils
37 per teacher in a classroom for the purposes of instruc-
38 tion in physical education, and (b) to permit more than
39 twenty pupils per teacher in a specific kindergarten
40 classroom and twenty-five pupils per teacher in a
41 specific classroom in grades one through six during a
42 school year in the event of extraordinary circumstances

43 as determined by the state superintendent after appli-
44 cation by a county board of education.

45 The state board shall establish guidelines for the
46 exceptions authorized in this section, but in no event
47 shall the superintendent except classrooms having more
48 than three pupils above the pupil-teacher ratio as set
49 forth in this section.

50 The requirement for approval of an exception to
51 exceed the twenty pupils per kindergarten teacher per
52 session limit or the twenty-five pupils per teacher limit
53 in grades one through six is waived in schools where the
54 schoolwide pupil-teacher ratio is twenty-five or less in
55 grades one through six: *Provided*, That a teacher shall
56 not have more than three pupils above the teacher/pupil
57 ratio as set forth in this section. Any kindergarten
58 teacher who has more than twenty pupils per session
59 and any classroom teacher of grades one through six
60 who has more than twenty-five pupils shall be paid
61 additional compensation based on the affected classroom
62 teacher's average daily salary divided by twenty for
63 kindergarten teachers or twenty-five for teachers of
64 grades one through six for every day times the number
65 of additional pupils enrolled up to the maximum pupils
66 permitted in the teacher's classroom. All such additional
67 compensation shall be paid from county funds
68 exclusively.

69 No provision of this section is intended to limit the
70 number of pupils per teacher in a classroom for the
71 purpose of instruction in choral, band or orchestra
72 music.

73 Each school principal shall assign students equitably
74 among the classroom teachers, taking into consideration
75 reasonable differences due to subject areas and/or grade
76 levels.

77 The state board shall collect from each county board
78 of education information on class size and the number
79 of pupils per teacher for all classes in grades seven
80 through twelve. The state board shall report such
81 information to the legislative oversight commission on

82 education accountability before the first day of January
83 of each year.

§18-5-18c. Early childhood programs; eligibility and standards for placement; guidelines and criteria.

1 County boards shall provide by the school year one
2 thousand nine hundred eighty-nine—ninety, and contin-
3 uing thereafter, programs and instructional procedures
4 that recognize the variability in achievement, develop-
5 ment, and background experience of the early childhood
6 years.

7 Such programs and instructional procedures may
8 include, but shall not be limited to, developmental
9 kindergarten, developmental first grade, early first
10 grade, transitional first grade, and/or developmental
11 second grade.

12 Placement of children in any of the aforementioned
13 early childhood programs shall be based on the judg-
14 ment of the teacher and other professional personnel
15 after consultation with the parent or guardian and in
16 accordance with the evaluation model for children as set
17 forth in section two, article two-e of this chapter.
18 Counties may designate one or more classes or schools
19 for such early childhood programs and may transport
20 children to these schools.

21 Provisions shall be made for early childhood teachers
22 to communicate on a regular basis with other teachers,
23 professional personnel and representatives of other
24 appropriate agencies.

25 The state board shall establish and prescribe guide-
26 lines and criteria relating to the establishment, opera-
27 tion and successful completion of early childhood
28 programs in accordance with the other provisions of this
29 section and high quality educational programs.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-2. Definitions.

§18-9A-4. Foundation allowance for professional educators.

§18-9A-5a. Ratio of foundation allowances for professional educators and service personnel to net enrollment.

§18-9A-6a. Teachers retirement fund allowance.

- §18-9A-7. Foundation allowance for transportation cost.
§18-9A-8. Foundation allowance for administrative cost.
§18-9A-9. Foundation allowance for other current expense and substitute employees.
§18-9A-10. Foundation allowance to improve instructional programs.
§18-9A-13b. Allowances for remedial and accelerated education programs and salary equity.
§18-9A-22. Standards for educational quality.

§18-9A-2. Definitions.

1 For the purpose of this article:

2 "State board" means the West Virginia board of
3 education.

4 "County board" or "board" means a county board of
5 education.

6 "Professional salaries" means the state legally man-
7 dated salaries of the professional educators as provided
8 in article four, chapter eighteen-a of this code.

9 "Professional educator" shall be synonymous with and
10 shall have the same meaning as "teacher" as defined in
11 section one, article one, chapter eighteen of this code.

12 "Professional instructional personnel" means a profes-
13 sional educator whose regular duty is as that of a
14 classroom teacher, librarian, counselor, attendance
15 director, school psychologist or school nurse with a
16 bachelors degree and who is licensed by the West
17 Virginia board of examiners for registered professional
18 nurses. A professional educator having both instruc-
19 tional and administrative or other duties shall be
20 included as professional instructional personnel for that
21 ratio of the school day for which he is assigned and
22 serves on a regular full-time basis in appropriate
23 instruction, library, counseling, attendance, psychologist
24 or nursing duties.

25 "Service personnel salaries" shall mean the state
26 legally mandated salaries for service personnel as
27 provided in section eight-a, article four, chapter
28 eighteen-a of this code.

29 "Service personnel" shall mean all personnel as
30 provided for in section eight, article four, chapter

31 eighteen-a of this code. For the purpose of computations
32 under this article of ratios of service personnel to
33 adjusted enrollment, a service employee shall be counted
34 as that number found by dividing his number of
35 employment days in a fiscal year by two hundred:
36 *Provided*, That the computation for any such person
37 employed for three and one-half hours or less per day
38 as provided in section eight-a, article four, chapter
39 eighteen-a of this code shall be calculated as one half an
40 employment day.

41 "Net enrollment" means the number of pupils enrolled
42 in special education programs, kindergarten programs
43 and grades one to twelve, inclusive, of the public schools
44 of the county. Commencing with the school year
45 beginning on the first day of July, one thousand nine
46 hundred eighty-eight, net enrollment further shall
47 include adults enrolled in regular secondary vocational
48 programs existing as of the effective date of this section:
49 *Provided*, That net enrollment shall include no more
50 than one thousand such adults counted on the basis of
51 full-time equivalency and apportioned annually to each
52 county in proportion to the adults participating in
53 regular secondary vocational programs in the prior year
54 counted on the basis of full-time equivalency: *Provided*,
55 *however*, That no tuition or special fees beyond that
56 required of the regular secondary vocational student is
57 charged for such adult students.

58 "Adjusted enrollment" means the net enrollment plus
59 twice the number of pupils enrolled for special educa-
60 tion. Commencing with the school year beginning on the
61 first day of July, one thousand nine hundred ninety,
62 adjusted enrollment means the net enrollment plus
63 twice the number of pupils enrolled for special educa-
64 tion, including exceptional gifted, plus the number of
65 pupils in grades nine through twelve enrolled for honors
66 and advanced placement programs, plus the number of
67 pupils enrolled on the first day of July, one thousand
68 nine hundred eighty-nine, in the gifted program in
69 grades nine through twelve: *Provided*, That commenc-
70 ing with the school year beginning on the first day of
71 July, one thousand nine hundred ninety, no more than

72 four percent of net enrollment of grades one through
73 eight may be counted as enrolled in gifted education and
74 no more than six percent of net enrollment of grades
75 nine through twelve may be counted as enrolled in
76 gifted education, exceptional gifted education (subject to
77 the limitation set forth in section one, article twenty of
78 this chapter) and honors and advanced placement
79 programs for the purpose of determining adjusted
80 enrollment within a county: *Provided, however,* That
81 nothing herein shall be construed to limit the number
82 of students who may actually enroll in gifted, honors or
83 advanced placement education programs in any county:
84 *Provided further,* That until the school year beginning
85 on the first day of July, one thousand nine hundred
86 ninety-two, the preceding percentage limitations shall
87 not restrict the adjusted enrollment definition for a
88 county to the extent that those limitations are exceeded
89 by students enrolled in gifted education programs on the
90 first day of July, one thousand nine hundred eighty-nine:
91 *And provided further,* That no pupil may be counted
92 more than three times for the purpose of determining
93 adjusted enrollment. Such enrollment shall be adjusted
94 to the equivalent of the instructional term and in
95 accordance with such eligibility requirements and rules
96 as established by the state board. No pupil shall be
97 counted more than once by reason of transfer within the
98 county or from another county within the state, and no
99 pupil shall be counted who attends school in this state
100 from another state.

101 "Levies for general current expense purposes" means
102 on each hundred dollars of valuation, twenty-two and
103 five tenths cents on Class I property, forty-five cents on
104 Class II property, and ninety cents on Classes III and
105 IV property.

106 "Basic resources per pupil" for the state and the
107 several counties means the total of (a) property tax
108 revenues computed at the maximum regular levy rates
109 as provided by section six-c, article eight, chapter eleven
110 of this code, at a uniform rate of ninety-five percent, but
111 excluding revenues from increased levies as provided in
112 section ten, article X of the Constitution of West

113 Virginia, and (b) basic state aid as provided in sections
114 twelve and thirteen of this article, but excluding the
115 foundation allowance to improve instructional programs
116 as provided in section ten of this article, and excluding
117 any funds appropriated for the purpose of achieving
118 salary equity among county board employees, this total
119 divided by the number of students in adjusted enrol-
120 lment: *Provided*, That beginning with the school year
121 commencing on the first day of July, one thousand nine
122 hundred ninety-one, and thereafter, the foundation
123 allowance for transportation cost as provided in section
124 seven of this article shall also be excluded and the total
125 shall be divided by the number of students in net
126 enrollment: *Provided, however*, That any year's alloca-
127 tions to the counties of the eighty percent portion of the
128 foundation allowance to improve instructional pro-
129 grams, as provided in section ten of this article, shall
130 be determined on the basis of the immediately preceding
131 school year's basic resources per pupil.

§18-9A-4. Foundation allowance for professional educators.

1 The basic foundation allowance to the county for
2 professional educators shall be the amount of money
3 required to pay the state minimum salaries, in accor-
4 dance with provisions of article four, chapter eighteen-
5 a of the code, to such personnel employed: *Provided*,
6 That in making this computation no county shall receive
7 an allowance for such personnel which number is in
8 excess of fifty-five professional educators to each one
9 thousand students in adjusted enrollment: *Provided*,
10 *however*, That any county not qualifying under the
11 provision of section fourteen of this article shall be
12 eligible for a growth rate in professional personnel in
13 any one year not to exceed twenty percent of its total
14 potential increase under this provision, except that in no
15 case shall such limit be fewer than five professionals:
16 *Provided further*, That the number of and the allowance
17 for personnel paid in part by state and county funds
18 shall be prorated: *And provided further*, That where two
19 or more counties join together in support of a vocational
20 or comprehensive high school or any other program or

21 service, the professional educators for such school or
22 program may be prorated among the participating
23 counties on the basis of each one's enrollment therein
24 and that such personnel shall be considered within the
25 above-stated limit: *And provided further*, That in the
26 school year beginning the first day of July, one thousand
27 nine hundred eighty-eight, and the succeeding school
28 year, each county board shall establish and maintain a
29 minimum ratio of fifty professional instructional
30 personnel per one thousand students in adjusted
31 enrollment, and in the school year beginning the first
32 day of July, one thousand nine hundred ninety, and for
33 each succeeding school year, each county board shall
34 establish and maintain a minimum ratio of fifty-one
35 professional instructional personnel per one thousand
36 students in adjusted enrollment. Any county board
37 which does not establish and maintain this minimum
38 ratio shall suffer a pro rata reduction in the allowance
39 for professional educators under this section, and,
40 further, any county board which does not establish and
41 maintain this minimum ratio shall utilize any and all
42 allocations to it by provision of section fourteen of this
43 article solely to employ professional instructional
44 personnel until the minimum ratio is attained: *And*
45 *provided further*, That for the fiscal year commencing
46 on the first day of July, one thousand nine hundred
47 eighty-eight, only, the foundation allowance for profes-
48 sional educators for a county board of education shall
49 be equal to the amount allowable based upon the actual
50 ratio of professional educators per one thousand students
51 in net enrollment for which the county board of
52 education received state reimbursement during the
53 school year one thousand nine hundred eighty-seven—
54 eighty-eight, except that this provision shall not apply
55 to those counties whose percent rate of special education
56 enrollment to net enrollment is less than sixteen and two
57 tenths percent. No person employed prior to the first
58 day of July, one thousand nine hundred eighty-eight,
59 shall have their employment terminated because of a
60 reduction in force resulting from the provisions of this
61 section. Every county shall utilize methods other than
62 reductions in force, such as attrition and early retire-

ment, before implementing their reductions in force policy to comply with the limitations of this section.

§18-9A-5a. Ratio of foundation allowances for professional educators and service personnel to net enrollment.

(a) The purpose of this section is to establish maximum ratios between the numbers of professional educators and service personnel in the counties which are funded through the public school support plan and the net enrollment in the counties, such ratios are in addition to the ratios provided for in sections four and five of this article. It is the intent of the Legislature to adjust these ratios pursuant to legislative act as may be appropriate when additional personnel are needed to perform additional duties.

(b) Commencing with the school year one thousand nine hundred eighty-nine—ninety, and each year thereafter, in computing the basic foundation allowance to a county for professional educators and the basic foundation allowance to a county for service personnel under sections four and five of this article, a county shall not receive an allowance for such personnel which number per one thousand students in net enrollment is in excess of the number of professional educators and the number of service personnel in the county computed as follows:

For the school year	Maximum professional educators per 1000 net enrollment the preceding year	Maximum service personnel per 1000 net enrollment the preceding year
1989-90	76.5	45.5
1990-91	76.0	45.0
1991-92	75.5	44.5
1992-93	75.0	44.0
1993-94	74.5	43.75
1994-95 and thereafter	74.0	43.5

(c) No person employed prior to the first day of July, one thousand nine hundred eighty-eight, will be laid off because of a reduction in force resulting from the

36 provisions of this section. Every county shall utilize
37 methods other than reductions in force, such as attrition
38 and early retirement, before implementing their
39 reductions in force policy to comply with the limitations
40 of this section.

41 (d) For the school years one thousand nine hundred
42 eighty-nine—ninety and one thousand nine hundred
43 ninety—ninety-one only, if a school district loses more
44 than six percent of the number chargeable for the
45 previous school year for professional educator positions
46 or service personnel positions, due to the maximum
47 ratios established in subsection (b) of this section, it may
48 apply to the state board for a waiver of said ratios to
49 the extent that the loss exceeds either six percent of its
50 professional educators or service personnel: *Provided,*
51 That the county board of education establishes and
52 maintains a minimum ratio of fifty professional instruc-
53 tional personnel per one thousand students in adjusted
54 enrollment for the school year beginning the first day
55 of July, one thousand nine hundred eighty-nine, and
56 fifty-one professional instructional personnel per one
57 thousand students in adjusted enrollment for the school
58 year one thousand nine hundred ninety—ninety-one as
59 required in section four of this article. Waivers shall be
60 determined on a case by case basis according to rules
61 adopted by the state board and granted to the extent
62 funds are appropriated by the Legislature for this
63 purpose. Prior to the adoption of such rules, the state
64 board shall conduct a thorough review of the staffing
65 patterns in each county. Any personnel positions funded
66 as a result of a waiver granted under the provisions of
67 this subsection shall not be included in the computations
68 set forth in sections four and five of this article.

§18-9A-6a. Teachers retirement fund allowance.

1 The total teachers retirement fund allowance shall be
2 the sum of the basic foundation allowance for profes-
3 sional educators and the basic foundation allowance for
4 service personnel, as provided in sections four and five
5 of this article; all salary equity appropriations autho-
6 rized in section five, article four of chapter eighteen-a;
7 and such amounts as are to be paid by the counties

8 pursuant to sections five-a and five-b of said article to
9 the extent such county salary supplements are equal to
10 the amount distributed for salary equity among the
11 counties, multiplied by fifteen percent.

12 The teachers retirement fund allowance amounts shall
13 be accumulated in the employers accumulation fund of
14 the state teachers retirement system pursuant to section
15 eighteen, article seven-a of this chapter, and shall be in
16 lieu of the contribution required of employers pursuant
17 to subsection (b) of said section eighteen as to all
18 personnel included in the allowance for state aid in
19 accordance with sections four and five of this article.

§18-9A-7. Foundation allowance for transportation cost.

1 The allowance in the foundation school program for
2 each county for transportation shall be the sum of the
3 following computations:

4 (1) Eighty percent of the transportation cost within
5 each county for maintenance, operation and related
6 costs, exclusive of all salaries;

7 (2) The total cost, within each county, of insurance
8 premiums on buses, buildings and equipment used in
9 transportation: *Provided*, That such premiums were
10 procured through competitive bidding;

11 (3) For the school year beginning the first day of July,
12 one thousand nine hundred eighty-nine, and thereafter,
13 an amount equal to ten percent of the current replace-
14 ment value of the bus fleet within each county as
15 determined by the state board, such amount to be used
16 only for the replacement of buses;

17 (4) Eighty percent of the cost of contracted transpor-
18 tation services and public utility transportation with
19 each county; and

20 (5) Aid in lieu of transportation equal to the state
21 average amount per pupil for each pupil receiving such
22 aid within each county.

23 The total state share for this purpose shall be the sum
24 of the county shares: *Provided*, That no county shall
25 receive an allowance which is greater than one third

26 above the computed state average allowance per mile
27 multiplied by the total mileage in the county.

18-9A-8. Foundation allowance for administrative cost.

1 The allowance for administrative cost shall be equal
2 to one and twenty-five one hundredths percent of the
3 allocation for professional educators, as determined in
4 section four of this article.

5 Distribution of the computed allowance shall be made
6 as follows:

7 (1) Fifty-six percent of the allowance shall be distrib-
8 uted to the counties in equal amounts; and

9 (2) Forty-four percent of the allowance shall be
10 distributed to the regional educational service agencies
11 in accordance with rules adopted by the state board. The
12 allowance for regional educational service agencies shall
13 be excluded from the computation of total basic state aid
14 as provided for in section twelve of this article.

**§18-9A-9. Foundation allowance for other current ex-
pense and substitute employees.**

1 The total allowance for other current expense and
2 substitute employees shall be the sum of the following:

3 (1) For current expense, for the year one thousand
4 nine hundred eighty-nine—ninety only, ten percent of
5 the sum of the computed state allocation for professional
6 educators and service personnel as determined in
7 sections four and five of this article, and thereafter the
8 rate shall be ten and six-tenths percent. Distribution to
9 the counties shall be made proportional to the average
10 of each county's average daily attendance for the
11 preceding year and the county's second month net
12 enrollment; plus

13 (2) For professional educator substitutes or current
14 expense, two and five-tenths percent of the computed
15 state allocation for professional educators as determined
16 in section four of this article. Distribution to the counties
17 shall be made proportional to the total county allocation
18 for professional educators; plus

19 (3) For service personnel substitutes or current
20 expense, two and five-tenths percent of the computed

21 state allocation for service personnel as determined in
22 section five of this article. Distribution to the counties
23 shall be made proportional to the total county allocation
24 for service personnel.

§18-9A-10. Foundation allowance to improve instructional programs.

1 (a) Commencing with the school year beginning on
2 the first day of July, one thousand nine hundred eighty-
3 nine, and thereafter, twenty-eight million eight hundred
4 thousand dollars, in addition to funds which accrue from
5 allocations due to increase in total local share above that
6 computed for the school year beginning on the first day
7 of July, one thousand nine hundred eighty-nine, from
8 balances in the general school fund, or from appropri-
9 ations for such purpose shall be allocated to increase
10 state support of counties as follows:

11 (1) Twenty percent of these funds shall be allocated
12 to the counties proportional to adjusted enrollment; and

13 (2) Each county whose allocation in subsection (1) is
14 less than one hundred fifty thousand dollars in any fiscal
15 year shall then receive an amount which equals the
16 difference between such amount received and one
17 hundred fifty thousand dollars.

18 (b) The remainder of these funds shall be allocated
19 according to the following plan for progress toward
20 basic resources per pupil equity:

21 Beginning with the county which has the lowest basic
22 resources per pupil and progressing through the
23 counties successively to and beyond the county with the
24 highest basic resources per pupil, the funds available
25 shall be allocated in amounts necessary to increase
26 moneys available to the county or counties to the basic
27 resources per pupil level, as nearly as is possible, of the
28 county having the next higher basic resources per pupil:
29 *Provided*, That to be eligible for its allocation under this
30 section, a county board shall lay the maximum regular
31 tax rates set out in section six-c, article eight, chapter
32 eleven of this code: *Provided, however*, That moneys
33 allocated by provision of this section shall be used to

34 improve instructional programs according to a plan for
35 instructional improvement which the affected county
36 board shall file with the state board by the first day of
37 August of each year, to be approved by the state board
38 by the first day of September of that year if such plan
39 substantially complies with standards to be adopted by
40 the state board: *Provided further*, That no part of this
41 allocation may be used to employ professional educators
42 in counties until and unless all applicable provisions of
43 sections four and fourteen of this article have been fully
44 utilized. Such instructional improvement plan shall be
45 made available for distribution to the public at the office
46 of each affected county board.

47 (c) Commencing with the school year beginning on the
48 first day of July, one thousand nine hundred eighty-
49 eight, and thereafter, fifty percent of the funds which
50 accrue due to an increase in local share above that
51 computed for the school year beginning on the first day
52 of July, one thousand nine hundred eighty-seven, shall
53 be paid into the school building capital improvements
54 fund created by section six, article nine-d of this
55 chapter, and shall be used solely for the purposes of said
56 article nine-d.

57 (d) There shall be appropriated seven million four
58 hundred ten thousand six hundred sixty-eight dollars
59 for aid to counties which may be expended by the county
60 boards for the initiation, and/or improvements of special
61 education programs including employment of new
62 special education professional personnel solely serving
63 exceptional children; instructional programs which
64 utilize state of the art technology; training of educa-
65 tional personnel to work with exceptional children; and
66 supportive costs such as materials, transportation,
67 contracted services, minor renovations and other costs
68 directly related to the special education delivery process
69 prescribed by the state board. The appropriation may
70 also be used for nonpersonnel costs associated with the
71 maintenance of special education programs in accor-
72 dance with such rules as established by the state board.
73 The appropriation includes out-of-state instruction and
74 may be expended to provide instruction, care and

75 maintenance for educable persons who are severely
76 handicapped and for whom the state provides no
77 facilities.

78 (e) There shall be appropriated two million one
79 thousand seven hundred thirty-two dollars to be used by
80 the state department of education which may be
81 expended for the purposes of paying staff and operating
82 costs of both administrative/program personnel and
83 instructional personnel delivering education to handi-
84 capped children in facilities operated by the state
85 department of health; paying state department of
86 education staff, current expenses and equipment;
87 supporting a gifted summer camp; and supporting
88 special state projects including, but not limited to, (1)
89 an instructional materials center for visually handi-
90 capped children at the West Virginia Schools for the
91 Deaf and the Blind, (2) the state special olympics
92 program, (3) the West Virginia advisory council for the
93 education of exceptional children at the West Virginia
94 College of Graduate Studies, (4) statewide training
95 activities or other programs benefiting exceptional
96 children, and (5) the state very special arts program.

**§18-9A-13b. Allowances for remedial and accelerated
education programs and salary equity.**

1 For the fiscal years commencing on the first day of
2 July, one thousand nine hundred eighty-eight and
3 eighty-nine, only, the total state appropriation for the
4 basic foundation program shall be no less than the state
5 appropriation for the fiscal year which began on the
6 first day of July, one thousand nine hundred eighty-
7 seven.

8 For the school year beginning on the first day of July,
9 one thousand nine hundred eighty-eight, and the school
10 year beginning on the first day of July, one thousand
11 nine hundred eighty-nine, funds which accrue from
12 allocations due to changes in adjusted enrollment above
13 that computed for the school year beginning on the first
14 day of July, one thousand nine hundred eighty-seven, or
15 from appropriations for such purpose, shall be allocated
16 to increase state support for salary equity and to develop

17 and implement remedial and accelerated programs in
18 the following manner:

19 Sixty percent of these funds shall be allocated for the
20 purpose of attaining salary equity among the counties
21 pursuant to section five, article four, chapter eighteen-
22 a; and

23 Forty percent of these funds shall be allocated to
24 implement remedial and accelerated programs as
25 developed under guidelines of the state board: *Provided,*
26 That for the school year one thousand nine hundred
27 eighty-nine—ninety, only, funds which accrue from
28 allocations due to changes in adjusted enrollment above
29 that computed for the school year beginning on the first
30 day of July, one thousand nine hundred eighty-seven,
31 shall be distributed for the purpose of achieving equity
32 within the state basic foundation program.

33 Commencing with the school year beginning on the
34 first day of July, one thousand nine hundred ninety, and
35 thereafter, funds which accrue from allocations due to
36 changes in adjusted enrollment above that computed for
37 the school year beginning on the first day of July, one
38 thousand nine hundred eighty-seven, or from appropri-
39 ations for such purpose, shall be allocated to increase
40 state support for salary equity and to develop and
41 implement remedial and accelerated programs in the
42 following manner:

43 Eighty percent of these funds shall be allocated for the
44 purpose of attaining salary equity among the counties
45 pursuant to section five, article four, chapter eighteen-
46 a; and

47 Twenty percent of these funds shall be allocated to
48 implement remedial and accelerated programs as
49 developed under guidelines of the state board.

§18-9A-22. Standards for educational quality.

1 (a) The purpose of this section is to declare the intent
2 of the Legislature to provide a thorough and efficient
3 system of education for West Virginia public school
4 students. High quality educational standards shall be
5 provided all public school students on an equal educa-

6 tional opportunity basis. A system for the review of
7 county educational plans and the on-site reviews of
8 county educational programs shall provide assurances
9 that the high quality standards, established pursuant to
10 this section, are being met.

11 On or before January one, one thousand nine hundred
12 eighty-five, the state board of education shall establish
13 and adopt high quality educational standards and shall
14 provide each county board of education a copy thereof.

15 On or before July one, one thousand nine hundred
16 eighty-five, and each July one thereafter, each county
17 board of education shall file an annual specific program
18 plan with the state department of education. The
19 program plan shall, at a minimum, meet the statewide
20 high quality educational standards as established by the
21 state board of education.

22 The purpose of the program plan is to allow county
23 boards of education flexibility in developing school
24 improvement programs structured around locally
25 identified needs, but in compliance with the high quality
26 standards adopted by the state board of education. High
27 quality standards must be met in curriculum, finance,
28 transportation, special education, facilities, textbooks,
29 personnel qualifications and other such areas as
30 determined by the state board of education.

31 The state department of education shall review the
32 plans annually and conduct an on-site review of each
33 county's educational program every fourth year. The
34 state board of education shall have authority to issue
35 four types of recognition status: (1) Full approval, (2)
36 substantial approval, (3) probationary and (4)
37 nonapproval.

38 Full approval status may be granted to a county board
39 of education whose educational program has undergone
40 an on-site evaluation by representatives of the state
41 department of education and has met the high quality
42 standards adopted by the state board of education. Full
43 approval status shall be for a period not to exceed four
44 years.

45 Substantial approval status may be granted to a
46 county board of education whose educational program
47 has satisfied all conditions identified under full approval
48 status, with the exception of an on-site review, or all
49 conditions identified under full approval have been
50 satisfied except that one or more of the high quality
51 standards have not been met but will be attained within
52 one year, as described in an acceptable plan of action.

53 Probationary status is given to a county board of
54 education whose educational program has not met the
55 high quality standards. Probationary status is a warn-
56 ing that the county board of education must make
57 specified improvements. If progress is not made toward
58 meeting the high quality standards during the succeed-
59 ing year, the county board of education is automatically
60 placed on nonapproval status.

61 Nonapproval status is given to a county board of
62 education which fails to submit an annual program
63 plan, fails to give evidence of meeting the high quality
64 standards or has not demonstrated a reasonable effort
65 to meet such standards.

66 (b) After the thirty-first day of December, one
67 thousand nine hundred eighty-eight, the approval of
68 educational programs based on high quality educational
69 standards established by the state board shall be in
70 accordance with the provisions of article two-e of this
71 chapter and the provisions of this section shall expire.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-1. Establishment of special programs and teaching services for exceptional children.

§18-20-9. Gifted education caseload review.

§18-20-1. Establishment of special programs and teaching services for exceptional children.

1 In accordance with the following provisions, county
2 boards of education throughout the state shall establish
3 and maintain for all exceptional children between five
4 and twenty-three years of age special educational
5 programs, including, but not limited to, special schools,
6 classes, regular classroom programs, home-teaching or

7 visiting-teacher services for any type or classification as
8 the state board shall approve. Provisions shall be made
9 for educating exceptional children (including the
10 handicapped and the gifted) who differ from the
11 average or normal in physical, mental or emotional
12 characteristics, or in communicative or intellectual
13 deviation characteristics, or in both communicative and
14 intellectual deviation characteristics, to the extent that
15 they cannot be educated safely or profitably in the
16 regular classes of the public schools or to the extent that
17 they need special educational provisions within the
18 regular classroom in order to educate them in accordance
19 with their capacities, limitations and needs:
20 *Provided*, That commencing with the school year
21 beginning on the first day of July, one thousand nine
22 hundred ninety, provisions shall be made for educating
23 exceptional children, including the handicapped, the
24 gifted in grades one through eight, the pupils enrolled
25 on the first day of July, one thousand nine hundred
26 eighty-nine, in the gifted program in grades nine
27 through twelve and the exceptional gifted in grades nine
28 through twelve. The term "exceptional gifted" means
29 those students in grades nine through twelve identified
30 as gifted and at least one of the following: Behavior
31 disorder, specific learning disabilities, psychological
32 adjustment disorder, underachieving, or economically
33 disadvantaged. Exceptional gifted children shall be
34 referred for identification pursuant to recommendation
35 by a school psychologist, school counselor, principal,
36 teacher, parent or by self-referral, at which time the
37 placement process, including development of an individualized
38 education program, and attendant due process
39 rights, shall commence. Exceptional gifted children, for
40 purposes of calculating adjusted enrollment pursuant to
41 section two, article nine-a of this chapter, shall not
42 exceed one percent of net enrollment in grades nine
43 through twelve. Nothing herein shall be construed to
44 limit the number of students identified as exceptional
45 gifted and who receive appropriate services. Each
46 county board of education is mandated to provide gifted
47 education to its students according to guidelines
48 promulgated by the state board and consistent with the

49 provisions of this chapter. Upon the recommendation of
50 a principal, counselor, teacher and parent, a student
51 who does not meet the gifted eligibility criteria may
52 participate in any school program deemed appropriate
53 for the student provided that classroom space is
54 available. In addition, county boards of education may
55 establish and maintain other educational services for
56 exceptional children as the state superintendent of
57 schools may approve.

58 By the school year beginning on the first day of July,
59 one thousand nine hundred seventy-four, county boards
60 of education shall establish and maintain these special
61 educational programs, including, but not limited to,
62 special schools, classes, regular class programs, home-
63 teaching and visiting-teacher services. After the first
64 day of July, one thousand nine hundred eighty-three, the
65 special education programs shall include home-teaching
66 or visiting-teacher services for children who are
67 homebound due to injury or who for any other reason
68 as certified by a licensed physician are homebound for
69 a period that has lasted or will last more than three
70 weeks: *Provided*, That pupils receiving such homebound
71 or visiting-teacher services shall not be included when
72 computing adjusted enrollment as defined in section
73 two, article nine-a, chapter eighteen of this code. The
74 state board shall adopt rules and regulations to advance
75 and accomplish this program and to assure that all
76 exceptional children in the state, including children in
77 mental health facilities, residential institutions and
78 private schools, will receive an education in accordance
79 with the mandates of state and federal laws.

80 Nothing in this section shall be construed to prevent
81 county boards of education from providing special
82 educational programs, including, but not limited to,
83 special schools, classes, regular class programs, home-
84 teaching or visiting-teacher services for such excep-
85 tional children who are three years of age or older.

§18-20-9. Gifted education caseload review.

1 Notwithstanding any other provision of this code to
2 the contrary, the teacher-student ratio for gifted, honors,

3 and advanced placement education in grades nine
4 through twelve shall be the same as regular classroom
5 education and not as required for special education of
6 exceptional children: *Provided*, That this shall not apply
7 to education of exceptional gifted, as defined in section
8 one, article twenty of this chapter. The state board shall
9 review class sizes and enrollment percentages of
10 students in gifted, exceptional gifted, honors, and
11 advanced placement programs in grades nine through
12 twelve and report its findings to the standing education
13 committees of the Senate and House of Delegates by the
14 tenth day of January, one thousand nine hundred ninety-
15 one.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-1. Definitions.

§18A-4-2. State minimum salaries for teachers.

§18A-4-5a. County salary supplements for teachers.

§18A-4-5b. County salary supplements for school service personnel.

§18A-4-5c. Equity appropriation from surplus revenues.

§18A-4-8a. Service personnel minimum monthly salaries.

§18A-4-8d. Consolidation of services and seniority rights for administrative personnel.

§18A-4-1. Definitions.

1 For the purpose of this section, salaries shall be
2 defined as: (a) "Basic salaries" which shall mean the
3 salaries paid to teachers with zero years of experience
4 and in accordance with the classification of certification
5 and of training of said teachers; and (b) "advanced
6 salaries" which shall mean the basic salary plus an
7 experience increment based on the allowable years of
8 experience of the respective teachers in accordance with
9 the schedule established herein for the applicable
10 classification of certification and of training of said
11 teachers.

12 "Classification of certification" means the class or type
13 of certificate issued by the state superintendent of
14 schools under the statutory provisions of this chapter.
15 "Classification of training" means the number of
16 collegiate or graduate hours necessary to meet the

17 requirements stipulated in the definitions set forth in
18 the next paragraph in items (2) to (10), inclusive.

19 The column heads of the state minimum salary
20 schedule set forth in section two of this article are
21 defined as follows:

22 (1) "Years of experience" means the number of years
23 the teacher has been employed in the teaching profes-
24 sion, including active work in educational positions
25 other than the public schools, and service in the armed
26 forces of the United States if the teacher were under
27 contract to teach at the time of induction. For a
28 registered professional nurse employed by a county
29 board of education, "years of experience" means the
30 number of years the nurse has been employed as a
31 public school health nurse, including active work in a
32 nursing position related to education, and service in the
33 armed forces if the nurse was under contract with the
34 county board at the time of induction. For the purpose
35 of section two of this article, the experience of a teacher
36 or a nurse shall be limited to that allowed under their
37 training classification as found in the minimum salary
38 schedule.

39 (2) "Fourth class" means all certificates previously
40 identified as (a) "certificates secured by examination,"
41 and (b) "other first grade certificates."

42 (3) "Third class" means all certificates previously
43 identified as (a) "standard normal certificates" and (b)
44 "third class temporary (sixty-four semester hours)
45 certificates."

46 (4) "Second class" means all certificates previously
47 identified as "second class temporary certificates based
48 upon the required ninety-six hours of college work."

49 (5) "A.B." means a bachelor's degree, from an accre-
50 dited institution of higher education, which has been
51 issued to, or for which the requirements for such have
52 been met by, a person who qualifies for or holds a
53 professional certificate or its equivalent. A registered
54 professional nurse with a bachelor's degree, who is
55 licensed by the West Virginia board of examiners for

56 registered professional nurses and employed by a county
57 board of education, shall be within this classification for
58 payment in accordance with sections two and two-a of
59 this article.

60 (6) "A.B. plus 15" means a bachelor's degree as
61 defined above plus fifteen hours of graduate work, from
62 an accredited institution of higher education certified to
63 do graduate work, in an approved planned program at
64 the graduate level which requirements have been met
65 by a person who qualifies for or holds a professional
66 certificate or its equivalent.

67 (7) "M. A." means a master's degree, earned in an
68 institution of higher education approved to do graduate
69 work, which has been issued to, or the requirements for
70 such have been met by, a person who qualifies for or
71 holds a professional certificate or its equivalent.

72 (8) "M. A. plus 15" means the above-defined master's
73 degree plus fifteen hours of graduate work, earned in
74 an institution of higher education approved to do
75 graduate work, if the person is qualified for or holds a
76 professional certificate or its equivalent.

77 (9) "M. A. plus 30" means the above-defined master's
78 degree plus thirty graduate hours, earned in an
79 institution approved to do graduate work, if the person
80 is qualified for or holds a professional certificate or its
81 equivalent.

82 (10) "Doctorate" means a doctor's degree, earned from
83 a university qualified and approved to confer such a
84 degree, which has been issued to or the requirements for
85 such have been met by a person who qualifies for or
86 holds a professional certificate or its equivalent.

87 Notwithstanding the requirements set forth in subdi-
88 visions (6), (8) and (9) of this section relating to hours
89 of graduate work at an institution certified to do such
90 work, fifteen undergraduate credit hours from a
91 regionally accredited institution of higher education,
92 earned after the effective date of this section, may be
93 utilized for advanced salary classification if such hours
94 are in accordance with (a) the teacher's current

95 classification of certification and of training, (b) a
96 designated instructional shortage area documented by
97 the employing county superintendent, or (c) an identi-
98 fied teaching deficiency documented through the state
99 approved county personnel evaluation system.

100 Any professional educator earning a master's degree
101 shall be entitled to any "MA" classifications of training
102 for purposes of compensation pursuant to the provisions
103 of the in-field master's salary schedule set forth in
104 section two of this article only if a minimum of two-
105 thirds of the course work for such degree is in the field
106 in which the professional educator holds certification
107 and is employed: *Provided*, That the classroom teacher
108 who holds multiple certifications or a certification in
109 elementary education and has obtained an in-field
110 master's in one of those certification areas shall be
111 compensated at the level commensurate with the in-field
112 provisions.

113 Upon request for a specific master's degree program,
114 the appropriate governing board of higher education
115 shall provide all of the course work needed to obtain a
116 master's degree in the requested program. The course
117 work for such program shall be initiated no later than
118 two years from the date requested and shall be provided
119 in its entirety within each regional educational service
120 agency area in which the request has been made as
121 follows: (1) Via satellite instruction; (2) via public
122 television home instruction; or (3) in a manner pres-
123 cribed by such governing board. If a governing board
124 fails to initiate the course work within the above time
125 period, an individual shall be compensated at the
126 appropriate level of years of experience on the in-field
127 master's salary schedule whenever the individual has
128 obtained any master's degree related to the public school
129 program.

130 The governing boards of higher education shall
131 develop a plan to provide "MA" classification programs
132 to professional educators throughout this state by the
133 first day of January, one thousand nine hundred ninety-
134 one, with the objective being to provide course work

135 enabling professional educators to achieve an "MA"
 136 degree classification in their teaching field.

§18A-4-2. State minimum salaries for teachers.

STATE MINIMUM SALARY SCHEDULE I							
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Years	4th	3rd	2nd		A.B.	
	Exp.	Class	Class	Class	A.B.	+15	M.A.
5	0	11,253	11,860	12,103	13,255	13,955	14,655
6	1	11,459	12,066	12,309	13,636	14,336	15,036
7	2	11,665	12,272	12,515	14,017	14,717	15,417
8	3	11,871	12,478	12,721	14,398	15,098	15,798
9	4	12,302	12,909	13,152	15,004	15,704	16,404
10	5	12,508	13,115	13,358	15,385	16,085	16,785
11	6	12,714	13,321	13,564	15,766	16,466	17,166
12	7		13,527	13,770	16,147	16,847	17,547
13	8		13,733	13,976	16,528	17,228	17,928
14	9			14,182	16,909	17,609	18,309
15	10			14,388	17,290	17,990	18,690
16	11				17,671	18,371	19,071
17	12				18,052	18,752	19,452
18	13				18,433	19,133	19,833
19	14						20,214
20	15						20,595
21	16						20,976
22	17						
23	18						
24	19						
25					(8)	(9)	(10)
26	Years				M.A.	M.A.	Doc-
27	Exp.				+15	+30	torate
28	0				15,355	16,055	16,755
29	1				15,736	16,436	17,136
30	2				16,117	16,817	17,517
31	3				16,498	17,198	17,898
32	4				17,104	17,804	18,504
33	5				17,485	18,185	18,885
34	6				17,866	18,566	19,266
35	7				18,247	18,947	19,647
36	8				18,628	19,328	20,028
37	9				19,009	19,709	20,409

38	10	19,390	20,090	20,790
39	11	19,771	20,471	21,171
40	12	20,152	20,852	21,552
41	13	20,533	21,233	21,933
42	14	20,914	21,614	22,314
43	15	21,295	21,995	22,695
44	16	21,676	22,376	23,076
45	17		22,757	23,457
46	18		23,138	23,838
47	19		23,519	24,219

48 STATE MINIMUM SALARY SCHEDULE II

49	(1)	(2)	(3)	(4)	(5)	(6)	(7)
50	Years	4th	3rd	2nd		A.B.	
51	Exp.	Class	Class	Class	A.B.	+15	M.A.
52	0	11,816	12,453	12,708	13,918	14,653	15,388
53	1	12,032	12,669	12,924	14,318	15,053	15,788
54	2	12,248	12,886	13,141	14,718	15,453	16,188
55	3	12,465	13,102	13,357	15,118	15,853	16,588
56	4	12,917	13,554	13,810	15,754	16,489	17,224
57	5	13,133	13,771	14,026	16,154	16,889	17,624
58	6	13,350	13,987	14,242	16,554	17,289	18,024
59	7		14,203	14,459	16,954	17,689	18,424
60	8		14,420	14,675	17,354	18,089	18,824
61	9			14,891	17,754	18,489	19,224
62	10			15,107	18,155	18,890	19,625
63	11				18,555	19,290	20,025
64	12				18,955	19,690	20,425
65	13				19,355	20,090	20,825
66	14						21,225
67	15						21,625
68	16						22,025
69	17						
70	18						
71	19						
72					(8)	(9)	(10)
73	Years				M.A.	M.A.	Doc-
74	Exp.				+15	+30	torate
75	0				16,123	16,858	17,593
76	1				16,523	17,258	17,993
77	2				16,923	17,658	18,393

78	3	17,323	18,058	18,793
79	4	17,959	18,694	19,429
80	5	18,359	19,094	19,829
81	6	18,759	19,494	20,229
82	7	19,159	19,894	20,629
83	8	19,559	20,294	21,029
84	9	19,959	20,694	21,429
85	10	20,360	21,095	21,830
86	11	20,760	21,495	22,230
87	12	21,160	21,895	22,630
88	13	21,560	22,295	23,030
89	14	21,960	22,695	23,430
90	15	22,360	23,095	23,830
91	16	22,760	23,495	24,230
92	17		23,895	24,630
93	18		24,295	25,030
94	19		24,695	25,430

95 STATE IN-FIELD MASTER'S SALARY SCHEDULE

96	(1)	(2)	(3)	(4)
97	Years		M.A.	M.A.
98	of Exp.	M.A.	+15	+30
99	0	16,388	17,123	17,858
100	1	16,788	17,523	18,258
101	2	17,188	17,923	18,658
102	3	17,588	18,323	19,058
103	4	18,224	18,959	19,694
104	5	18,624	19,359	20,094
105	6	19,024	19,759	20,494
106	7	19,424	20,159	20,894
107	8	19,824	20,559	21,294
108	9	20,224	20,959	21,694
109	10	20,625	21,360	22,095
110	11	21,025	21,760	22,495
111	12	21,425	22,160	22,895
112	13	21,825	22,560	23,295
113	14	22,225	22,960	23,695
114	15	22,625	23,360	24,095
115	16	23,025	23,760	24,495
116	17			24,895
117	18			25,295
118	19			25,695

119 On and after the first day of July, one thousand nine
120 hundred ninety-four, each teacher who has met the in-
121 field master's requirements set forth in section one of
122 this article shall receive the amount prescribed in the
123 "state in-field master's salary schedule" in lieu of the
124 "state minimum salary schedule II" and any other
125 compensation otherwise provided for in this section.

126 On and after the first day of July, one thousand nine
127 hundred eighty-six, each teacher shall receive the
128 amount prescribed in the "state minimum salary
129 schedule I" as set forth in this section, specific additional
130 amounts prescribed in this section or article, and any
131 county supplement in effect in a county pursuant to
132 section five-a of this article during the contract year:
133 *Provided*, That on and after the first day of the second
134 half of the teacher's employment term in the school year
135 one thousand nine hundred eighty-nine—ninety, each
136 teacher shall receive the amount prescribed in the "state
137 minimum salary schedule II" as set forth in this section,
138 specific additional amounts prescribed in this section or
139 article, and any county supplement in effect in a county
140 pursuant to section five-a of this article during the
141 contract year.

142 Six hundred dollars shall be paid annually to each
143 classroom teacher who has at least twenty years of
144 teaching experience. Such payments shall be in addition
145 to any amounts prescribed in the "state minimum salary
146 schedule," shall be paid in equal monthly installments,
147 and shall be deemed a part of the state minimum
148 salaries for teachers.

§18A-4-5a. County salary supplements for teachers.

1 County boards of education in fixing the salaries of
2 teachers shall use at least the state minimum salaries
3 established under the provisions of this article. The
4 board may establish salary schedules which shall be in
5 excess of the state minimums fixed by this article, such
6 county schedules to be uniform throughout the county
7 as to the above stipulated training classifications,
8 experience, responsibility and other requirements,
9 except that no such county schedule may exceed one

10 hundred two and one-half percent of a schedule which
11 incorporates the state minimum salary for teachers in
12 effect on the first day of July, one thousand nine
13 hundred eighty-four, and adopts a supplement which
14 equals the highest supplement provided by a county on
15 the first day of January, one thousand nine hundred
16 eighty-four, so as to assist the state in meeting its
17 objective of salary equity among the counties: *Provided,*
18 That all teachers in the state shall be entitled to any
19 increases in the minimum salary schedules established
20 under the provisions of this article, and when a county
21 schedule changes due to said increase in the state
22 minimum salary taking effect after the first day of July,
23 one thousand nine hundred eighty-four, it shall not be
24 deemed to exceed the maximum salary schedule pres-
25 cribed herein.

26 Counties may fix higher salaries for teachers placed
27 in special instructional assignments, for those assigned
28 to or employed for duties other than regular instruc-
29 tional duties, and for teachers of one-teacher schools,
30 and they may provide additional compensation for any
31 teacher assigned duties in addition to the teacher's
32 regular instructional duties wherein such noninstruc-
33 tional duties are not a part of the scheduled hours of the
34 regular school day. Uniformity also shall apply to such
35 additional salary increments or compensation for all
36 persons performing like assignments and duties within
37 the county: *Provided,* That in establishing such local
38 salary schedules, no county shall reduce local funds
39 allocated for salaries in effect on the first day of
40 January, one thousand nine hundred eighty-four, and
41 used in supplementing the state minimum salaries as
42 provided for in this article, unless forced to do so by
43 defeat of a special levy, or a loss in assessed values or
44 events over which it has no control and for which the
45 county board has received approval from the state board
46 prior to making such reduction.

47 Counties may provide, in a uniform manner, benefits
48 for teachers which require an appropriation from local
49 funds including, but not limited to, dental, optical,
50 health and income protection insurance, vacation time

51 and retirement plans excluding the state teachers
52 retirement system. Nothing herein shall prohibit the
53 maintenance nor result in the reduction of any benefits
54 in effect on January one, one thousand nine hundred
55 eighty-four, by any county board of education.

56 To further assist the state in meeting such objective,
57 each county board of education shall provide to the state
58 board of education on or before the first day of
59 November, one thousand nine hundred eighty-nine, such
60 information as the state board directs to assist the state
61 superintendent of schools in preparing a report to be
62 submitted to the Legislature on the first day of the
63 regular session thereof in the year one thousand nine
64 hundred ninety. Such report shall include findings,
65 conclusions and recommendations with respect to
66 benefits provided and meeting the objective of benefit
67 equity among the counties.

**§18A-4-5b. County salary supplements for school service
personnel.**

1 The county board of education may establish salary
2 schedules which shall be in excess of the state min-
3 imums fixed by this article, except that no such schedule
4 may exceed one hundred two and one-half percent of a
5 schedule which incorporates the state minimum salary
6 for school service personnel in effect on the first day of
7 July, one thousand nine hundred eighty-four, and adopts
8 a monthly supplement of two hundred and five dollars
9 for zero years of experience for all pay grades and which
10 increases said monthly supplement by two dollars for
11 each year of experience codified for school service
12 personnel in this article, so as to assist the state in
13 meeting its objective of salary equity among the
14 counties: *Provided*, That all school service personnel in
15 the state shall be entitled to any increases in the
16 minimum salary for school service personnel established
17 under the provisions of this article, and when a county
18 schedule changes due to said increase in the state
19 minimum salary taking effect after the first day of July,
20 one thousand nine hundred eighty-four, it shall not be
21 deemed to exceed the maximum salary schedule pres-
22 cribed herein. Any county supplement for any position

23 which, on the first day of January, one thousand nine
24 hundred eighty-four, extends the schedule beyond the
25 maximum prescribed herein for such position shall be
26 exempt from the maximums stated herein, subject to the
27 approval of the state board, but no such supplement
28 shall be increased beyond the amount received on the
29 first day of January, one thousand nine hundred eighty-
30 four.

31 These county schedules shall be uniform throughout
32 the county with regard to any training classification,
33 experience, years of employment, responsibility, duties,
34 pupil participation, pupil enrollment, size of buildings,
35 operation of equipment or other requirements. Further,
36 uniformity shall apply to all salaries, rates of pay,
37 benefits, increments or compensation for all persons
38 regularly employed and performing like assignments
39 and duties within the county: *Provided*, That in estab-
40 lishing such local salary schedules, no county shall
41 reduce local funds allocated for salaries in effect on the
42 first day of January, one thousand nine hundred eighty-
43 four, and used in supplementing the state minimum
44 salaries as provided for in this article, unless forced to
45 do so by defeat of a special levy, or a loss in assessed
46 values or events over which it has no control and for
47 which the county board has received approval from the
48 state board prior to making such reduction.

49 Counties may provide, in a uniform manner, benefits
50 for service personnel which require an appropriation
51 from local funds including, but not limited to, dental,
52 optical, health and income protection insurance, vaca-
53 tion time and retirement plans excluding the state
54 teachers retirement system. Nothing herein shall
55 prohibit the maintenance nor result in the reduction of
56 any benefits in effect on January one, one thousand nine
57 hundred eighty-four, by any county board of education.

58 To further assist the state in meeting such objective,
59 each county board of education shall provide to the state
60 board of education on or before the first day of
61 November, one thousand nine hundred eighty-nine, such
62 information as the state board directs to assist the state
63 superintendent of schools in preparing a report to be

submitted to the Legislature on the first day of the regular session thereof in the year one thousand nine hundred ninety. Such report shall include findings, conclusions, and recommendations with respect to benefits provided and meeting the objective of benefit equity among the counties.

§18A-4-5c. Equity appropriation from surplus revenues.

Notwithstanding the provisions of section five of this article, any moneys appropriated and expended for equity that are in addition to such amounts as were expended for such purpose prior to the effective date of this section shall be apportioned between teachers and school service personnel in such proportion as necessary to align more closely teachers and school service personnel with their counterparts in the contiguous states: *Provided*, That an adequate amount of such funds shall be reserved to finance the appropriate foundation allowances and staffing incentives provided for in article nine-a of chapter eighteen.

The state board shall collect information annually from contiguous states for the purpose of making a thorough and comprehensive comparison of West Virginia school service personnel salaries to those in surrounding states, which shall be used as a guide to align more closely teachers and school service personnel with their counterparts in the contiguous states.

§18A-4-8a. Service personnel minimum monthly salaries.

STATE MINIMUM PAY SCALE PAY GRADE I

Years of Employ- ment	A	B	C	D	E	F	G	H
0	822	842	882	932	982	1,042	1,072	1,142
1	842	862	902	952	1,002	1,062	1,092	1,162
2	862	882	922	972	1,022	1,082	1,112	1,182
3	882	902	942	992	1,042	1,102	1,132	1,202
4	902	922	962	1,012	1,062	1,122	1,152	1,222
5	922	942	982	1,032	1,082	1,142	1,172	1,242
6	942	962	1,002	1,052	1,102	1,162	1,192	1,262
7	962	982	1,022	1,072	1,122	1,182	1,212	1,282
8	982	1,002	1,042	1,092	1,142	1,202	1,232	1,302

33	9	1,002	1,022	1,062	1,112	1,162	1,222	1,252	1,322
34	10	1,022	1,042	1,082	1,132	1,182	1,242	1,272	1,342
35	11	1,042	1,062	1,102	1,152	1,202	1,262	1,292	1,362
36	12	1,062	1,082	1,122	1,172	1,222	1,282	1,312	1,382
37	13	1,082	1,102	1,142	1,192	1,242	1,302	1,332	1,402
38	14	1,102	1,122	1,162	1,212	1,262	1,322	1,352	1,422
39	15	1,122	1,142	1,182	1,232	1,282	1,342	1,372	1,442
40	16	1,142	1,162	1,202	1,252	1,302	1,362	1,392	1,462
41	17	1,162	1,182	1,222	1,272	1,322	1,382	1,412	1,482
42	18	1,182	1,202	1,242	1,292	1,342	1,402	1,432	1,502
43	19	1,202	1,222	1,262	1,312	1,362	1,422	1,452	1,522
44	20	1,222	1,242	1,282	1,332	1,382	1,442	1,472	1,542
45	21	1,242	1,262	1,302	1,352	1,402	1,462	1,492	1,562
46	22	1,262	1,282	1,322	1,372	1,422	1,482	1,512	1,582
47	23	1,282	1,302	1,342	1,392	1,442	1,502	1,532	1,602
48	24	1,302	1,322	1,362	1,412	1,462	1,522	1,552	1,622
49	25	1,322	1,342	1,382	1,432	1,482	1,542	1,572	1,642

50 STATE MINIMUM PAY SCALE PAY GRADE II

51	Years of								
52	Employ-								
53	ment	A	B	C	D	E	F	G	H
54	0	849	869	909	959	1,009	1,069	1,099	1,169
55	1	871	891	931	981	1,031	1,091	1,121	1,191
56	2	893	913	953	1,003	1,053	1,113	1,143	1,213
57	3	915	935	975	1,025	1,075	1,135	1,165	1,235
58	4	937	957	997	1,047	1,097	1,157	1,187	1,257
59	5	959	979	1,019	1,069	1,119	1,179	1,209	1,279
60	6	981	1,001	1,041	1,091	1,141	1,201	1,231	1,301
61	7	1,003	1,023	1,063	1,113	1,163	1,223	1,253	1,323
62	8	1,025	1,045	1,085	1,135	1,185	1,245	1,275	1,345
63	9	1,047	1,067	1,107	1,157	1,207	1,267	1,297	1,367
64	10	1,069	1,089	1,129	1,179	1,229	1,289	1,319	1,389
65	11	1,091	1,111	1,151	1,201	1,251	1,311	1,341	1,411
66	12	1,113	1,133	1,173	1,223	1,273	1,333	1,363	1,433
67	13	1,135	1,155	1,195	1,245	1,295	1,355	1,385	1,455
68	14	1,157	1,177	1,217	1,267	1,317	1,377	1,407	1,477
69	15	1,179	1,199	1,239	1,289	1,339	1,399	1,429	1,499
70	16	1,201	1,221	1,261	1,311	1,361	1,421	1,451	1,521
71	17	1,223	1,243	1,283	1,333	1,383	1,443	1,473	1,543
72	18	1,245	1,265	1,305	1,355	1,405	1,465	1,495	1,565
73	19	1,267	1,287	1,327	1,377	1,427	1,487	1,517	1,587
74	20	1,289	1,309	1,349	1,399	1,449	1,509	1,539	1,609

75	21	1,311	1,331	1,371	1,421	1,471	1,531	1,561	1,631
76	22	1,333	1,353	1,393	1,443	1,493	1,553	1,583	1,653
77	23	1,355	1,375	1,415	1,465	1,515	1,575	1,605	1,675
78	24	1,377	1,397	1,437	1,487	1,537	1,597	1,627	1,697
79	25	1,399	1,419	1,459	1,509	1,559	1,619	1,649	1,719
80	26	1,421	1,441	1,481	1,531	1,581	1,641	1,671	1,741
81	27	1,443	1,463	1,503	1,553	1,603	1,663	1,693	1,763
82	28	1,465	1,485	1,525	1,575	1,625	1,685	1,715	1,785
83	29	1,487	1,507	1,547	1,597	1,647	1,707	1,737	1,807
84	30	1,509	1,529	1,569	1,619	1,669	1,729	1,759	1,829

85	CLASS TITLE	PAY GRADE
86	Accountant I	D
87	Accountant II.....	E
88	Accountant III.....	F
89	Aide I	A
90	Aide II	B
91	Aide III	C
92	Aide IV	D
93	Audiovisual Technician.....	C
94	Auditor	G
95	Braille or Sign Language Specialist.....	E
96	Bus Operator	D
97	Buyer	F
98	Cabinetmaker	G
99	Cafeteria Manager.....	D
100	Carpenter I.....	E
101	Carpenter II.....	F
102	Chief Mechanic	G
103	Clerk I	B
104	Clerk II	C
105	Computer Operator	E
106	Cook I.....	A
107	Cook II	B
108	Cook III	C
109	Crew Leader.....	F
110	Custodian I	A
111	Custodian II	B
112	Custodian III	C
113	Custodian IV	D
114	Director or Coordinator of Services	H
115	Draftsman	D
116	Electrician I.....	F

117	Electrician II	G
118	Electronic Technician I	F
119	Electronic Technician II	G
120	Executive Secretary	G
121	Food Services Supervisor	G
122	Foreman	G
123	General Maintenance	C
124	Glazier	D
125	Graphic Artist	D
126	Groundsman	B
127	Handyman	B
128	Heating and Air Conditioning Mechanic I	E
129	Heating and Air Conditioning Mechanic II	G
130	Heavy Equipment Operator	E
131	Inventory Supervisor	D
132	Key Punch Operator	B
133	Locksmith	G
134	Lubrication Man	C
135	Machinist	F
136	Mail Clerk	D
137	Maintenance Clerk	C
138	Mason	G
139	Mechanic	F
140	Mechanic Assistant	E
141	Office Equipment Repairman I	F
142	Office Equipment Repairman II	G
143	Painter	E
144	Plumber I	E
145	Plumber II	G
146	Printing Operator	B
147	Printing Supervisor	D
148	Programmer	H
149	Roofing/Sheet Metal Mechanic	F
150	Sanitation Plant Operator	F
151	School Bus Supervisor	E
152	Secretary I	D
153	Secretary II	E
154	Secretary III	F
155	Supervisor of Maintenance	H
156	Supervisor of Transportation	H
157	Switchboard Operator-Receptionist	D
158	Truck Driver	D

159	Warehouse Clerk.....	C
160	Watchman.....	B
161	Welder.....	F

162 On and after the first day of July, one thousand nine
 163 hundred eighty-nine, the minimum monthly pay for
 164 each service employee whose employment is for a period
 165 of more than three and one-half hours a day shall be at
 166 least the amounts indicated in the "state minimum pay
 167 scale pay grade I" as set forth in this section, and the
 168 minimum monthly pay for each service employee whose
 169 employment is for a period of three and one-half hours
 170 or less a day shall be at least one half the amount
 171 indicated in the "state minimum pay scale pay grade I"
 172 set forth in this section: *Provided*, That beginning on the
 173 first day of the second half of the employment term in
 174 the school year one thousand nine hundred eighty-nine—
 175 ninety, and thereafter, "state minimum pay scale pay
 176 grade II" shall replace "state minimum pay scale pay
 177 grade I", and an additional ten dollars per month shall
 178 be added to the minimum monthly pay if the service
 179 employee holds a high school diploma or its equivalent.

180 Any service employee required to work on any legal
 181 school holiday shall be paid at a rate one and one-half
 182 times such employee's usual hourly rate.

183 Any full-time service personnel required to work in
 184 excess of their normal working day during any week
 185 which contains a school holiday for which they are paid
 186 shall be paid for such additional hours or fraction
 187 thereof at a rate of one and one-half times their usual
 188 hourly rate and paid entirely from county board of
 189 education funds.

190 No service employee shall have his or her daily work
 191 schedule changed during the school year without such
 192 employee's written consent, and such employee's re-
 193 quired daily work hours shall not be changed to prevent
 194 the payment of time and one-half wages or the employ-
 195 ment of another employee.

196 The minimum pay for extra-duty assignments as
 197 defined in section eight-b of this article shall be no less
 198 than one-seventh of the employee's daily total salary for

199 each hour the employee is involved in performing the
200 assignment and paid entirely from local funds. The
201 salary for any fraction of an hour the employee is
202 involved in performing the assignment shall be pro-
203 rated accordingly. When performing extra-duty assign-
204 ments, employees who are regularly employed on a one-
205 half day salary basis shall receive the same hourly
206 extra-duty assignment pay computed as though such an
207 employee were employed on a full-day salary basis.

**§18A-4-8d. Consolidation of services and seniority rights
for administrative personnel.**

1 Where two or more counties join together to share the
2 services of central office administrative personnel, any
3 employee whose services are no longer needed by virtue
4 of such sharing may have his or her contract terminated
5 for lack of need, as provided in sections two and six,
6 article two of this chapter, notwithstanding any provi-
7 sion of this code to the contrary. Any employee whose
8 contract is so terminated shall be afforded all rights
9 pursuant to section eight-b of this article.

CHAPTER 56

(H. B. 2280—By Delegates Sattes and Farmer)

[Passed March 23, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to providing option to requirement of mailing school report cards.

Be it enacted by the Legislature of West Virginia:

That article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-a, to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**§18-2E-4a. Exception to requirement of mailing school report cards.**

1 Notwithstanding the provisions of section four of this
2 article requiring school report cards to be mailed
3 directly to the parent or parents of each child enrolled
4 in the school, such report cards may, at the option of the
5 county board of education, be mailed as provided in said
6 section four or be given to each child for delivery to his
7 or her parent, parents, custodian or legal guardian:
8 *Provided*, That if the school report card is delivered by
9 the child, written verification must be received by the
10 school indicating the parent, parents, custodian or legal
11 guardian has received the school report card.

CHAPTER 57

(Com. Sub. for S. B. 478—By Senators Tomblin, M. Manchin and Blatnik, By Request)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county superintendents of schools; and providing a delayed effective date of current requirements for the appointment of a new superintendent.

Be it enacted by the Legislature of West Virginia:

That section four, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.**§18-4-4. Compensation generally; master's degree or equivalent required for new appointee.**

1 On or before the first day of May of the year in which
2 the superintendent is appointed, the board shall fix the
3 annual salary of the superintendent for the period of

4 appointment for the term beginning on the first day of
5 July following. The board shall pay the salary from the
6 general current expense fund of the district: *Provided*,
7 That the superintendent shall hold at least a master's
8 degree or its equivalent related to public school
9 education earned at an institution of higher education
10 approved to offer graduate work: *Provided, however*,
11 That commencing with the first day of July, one
12 thousand nine hundred ninety-three, any newly ap-
13 pointed superintendent employed as a superintendent
14 after the twenty-seventh day of June, one thousand nine
15 hundred eighty-eight, shall meet the requirements set
16 forth in section two of this article and at a minimum
17 shall qualify for an initial license as a superintendent,
18 hold at least a master's degree or its equivalent related
19 to public school education plus twenty-four semester
20 hours related to public school education earned at an
21 institution of higher education approved to offer
22 graduate work, and shall qualify for a superintendent's
23 certificate within three years of being employed as a
24 superintendent: *Provided further*, That any assistant
25 superintendent or educational administrator employed
26 in such capacity in this state prior to the twenty-seventh
27 day of June, one thousand nine hundred eighty-eight,
28 who was employed as a county superintendent in this
29 state shall not be required to meet the requirements of
30 the superintendent's initial licensure, certificate and
31 said twenty-four semester hours beyond a master's
32 degree.

CHAPTER 58

(S. B. 127—By Senators Holmes, Craigo, Blatnik, Dittmar,
Warner, Felton and Chernenko)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-b, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to term of office for county board members; and reducing the terms from six years to four years.

Be it enacted by the Legislature of West Virginia:

That section one-b, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-1b. Election; terms of office.

1 As the terms of county school board members who
2 presently hold office expire, members shall be elected
3 for four-year terms at the time of each regular primary
4 election commencing with the year one thousand nine
5 hundred ninety. The terms of such members shall begin
6 on the first day of July next following the primary
7 election at which they were elected.

8 The term of office of any member of any county board
9 of education shall immediately cease, and a vacancy
10 shall exist, upon occurrence of ineligibility as prescribed
11 in section one-a of this article.

12 This section shall in no manner be construed so as to
13 affect the unexpired terms of county school board
14 members who hold office or were elected under prior
15 existing law.

CHAPTER 59

(Com. Sub. for H. B. 2165—By Delegates Murphy and Sattes)

[Passed April 4, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to school terms; employment terms for teachers; providing that one of the seven days outside the school environment coincide with the federal holiday honoring the birthday of Martin Luther King, Jr.; and providing that no more than eight noninstructional days, except holidays, be scheduled before the first day of January in a school term.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15. School term; exception; levies; ages of persons to whom schools are open.

1 (a) The board shall provide a school term for its
2 schools which shall be comprised of (a) an employment
3 term for teachers, and (b) an instructional term for
4 pupils. Nothing in this section shall prohibit the
5 establishment of year-round schools in accordance with
6 rules to be established by the state board.

7 The employment term for teachers shall be no less
8 than ten months, a month to be defined as twenty
9 employment days exclusive of Saturdays and Sundays:
10 *Provided*, That the board may contract with all or part
11 of the personnel for a longer term. The employment
12 term shall be fixed within such beginning and closing
13 dates as established by the state board: *Provided*,
14 *however*, That the time between the beginning and
15 closing dates does not exceed forty-three weeks.

16 Within the employment term there shall be an
17 instructional term for pupils of not less than one
18 hundred eighty nor more than one hundred eighty-five
19 instructional days: *Provided*, That the minimum instruc-
20 tional term may be decreased, by order of the state
21 superintendent of schools, in any West Virginia county
22 declared to be a federal disaster area by the Federal
23 Emergency Management Agency. Instructional and
24 noninstructional activities may be scheduled during the
25 same employment day. Noninstructional interruptions
26 to the instructional day shall be minimized to allow the
27 classroom teacher to teach. The instructional term shall
28 commence no earlier than the first day of September
29 and shall terminate no later than the eighth day of June.

30 Noninstructional days in the employment term may
31 be used for making up canceled instructional days,
32 curriculum development, preparation for opening and

33 closing of the instructional term, in-service and profes-
34 sional training of teachers, teacher-pupil-parent confer-
35 ences, professional meetings and other related activities.
36 In addition, each board shall designate and schedule for
37 teachers and service personnel seven days to be used by
38 the employee outside the school environment one of
39 which days shall coincide with the federal holiday
40 honoring the birthday of Martin Luther King, Jr.
41 However, no more than eight noninstructional days,
42 except holidays, may be scheduled prior to the first day
43 of January in a school term.

44 Notwithstanding any other provisions of the law to the
45 contrary, if the board has canceled instructional days
46 equal to the difference between the total instructional
47 days scheduled and one hundred seventy-eight, each
48 succeeding instructional day canceled shall be resche-
49 duled, utilizing only the remaining noninstructional
50 days, except holidays, following such cancellation, which
51 are available prior to the second day before the end of
52 the employment term established by such county board.

53 Where the employment term overlaps a teacher's or
54 service personnel's participation in a summer institute
55 or institution of higher education for the purpose of
56 advancement or professional growth, the teacher or
57 service personnel may substitute, with the approval of
58 the county superintendent, such participation for not
59 more than five of the noninstructional days of the
60 employment term.

61 The board may extend the instructional term beyond
62 one hundred eighty-five instructional days provided the
63 employment term is extended an equal number of days.
64 If the state revenues and regular levies, as provided by
65 law, are insufficient to enable the board of education to
66 provide for the school term, the board may at any
67 general or special election, if petitioned by at least five
68 percent of the qualified voters in the district, submit the
69 question of additional levies to the voters. If at the
70 election a majority of the qualified voters cast their
71 ballots in favor of the additional levy, the board shall
72 fix the term and lay a levy necessary to pay the cost of
73 the additional term. The additional levy fixed by the

74 election shall not continue longer than five years without
75 submission to the voters. The additional rate shall not
76 exceed by more than one hundred percent the maximum
77 school rate prescribed by article eight, chapter eleven
78 of the code, as amended.

79 (b) The Legislature finds and declares that excess
80 levies as they currently exist create unequal educational
81 opportunities from county to county based on the
82 difference in the will of the voters and also based on the
83 differences in property wealth among the counties; that
84 prior to the first day of July, one thousand nine hundred
85 ninety-four, the Legislature shall proceed to equalize
86 educational opportunities over and above the opportu-
87 nities afforded by each county's property values by
88 considering the existence or nonexistence of excess
89 levies as a factor in the distribution of equity moneys;
90 and that on and after the first day of July, one thousand
91 nine hundred ninety-four, the Legislature shall imple-
92 ment a plan for the equitable distribution of funds so
93 as to eliminate the inequities resulting from county
94 excess levies.

95 (c) The public schools shall be open for the full
96 instructional term to all persons who have attained the
97 entrance age as stated in section five, article two and
98 section eighteen, article five, chapter eighteen of this
99 code: *Provided*, That persons over the age of twenty-one
100 may enter only those programs or classes authorized by
101 the state board of education and deemed appropriate by
102 the county board of education conducting any such
103 program or class: *Provided, however*, That authorization
104 for such programs or classes shall in no way serve to
105 affect or eliminate programs or classes offered by
106 county boards of education at the adult level for which
107 fees are charged to support such programs or classes.

CHAPTER 60

(Com. Sub. for H. B. 2557—By Delegates Basham and Flanigan)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article five,

chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to "specialized health procedures" in the public schools; defining "specialized health procedures"; providing for emergency assistance; specifying school employees who shall be authorized and trained to perform "specialized health procedures"; creating a council of school nurses; and granting authority to the department of health to establish standards relating to "specialized health procedures."

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-22. Medical and dental inspection; school nurses; specialized health procedures; establishment of council of school nurses.

1 County boards of education shall provide proper
2 medical and dental inspections for all pupils attending
3 the schools of their county and shall further have the
4 authority to take any other action necessary to protect
5 the pupils from infectious diseases, including the
6 authority to require from all school personnel employed
7 in their county, certificates of good health and of
8 physical fitness.

9 Each county board of education shall employ full time
10 at least one school nurse for every one thousand five
11 hundred kindergarten through seventh grade pupils in
12 net enrollment or major fraction thereof: *Provided*, That
13 each county shall employ full time at least one school
14 nurse: *Provided, however*, That a county board may
15 contract with a public health department for services
16 deemed equivalent to those required by this section in
17 accordance with a plan to be approved by the state
18 board: *Provided further*, That the state board shall
19 promulgate rules and regulations requiring the employ-
20 ment of school nurses in excess of the number required
21 by this section to ensure adequate provision of services
22 to severely handicapped pupils.

23 Any person employed as a school nurse shall be a
24 registered professional nurse properly licensed by the
25 West Virginia board of examiners for registered
26 professional nurses in accordance with article seven,
27 chapter thirty of this code.

28 Beginning with the school year one thousand nine
29 hundred ninety—ninety-one, specialized health proce-
30 dures that require the skill, knowledge and judgment of
31 a licensed health professional, shall be performed only
32 by school nurses, other licensed school health care
33 providers as provided for in this section, or school
34 employees who have been trained and retrained every
35 two years and subject to the supervision and approval
36 by school nurses. After assessing the health status of the
37 individual student, a school nurse, in collaboration with
38 the student's physician, parents and in some instances
39 an individualized education program team, may dele-
40 gate certain health care procedures to a school employee
41 who shall be trained pursuant to this section, deemed
42 competent, have consultation with, and be monitored or
43 supervised by the school nurse: *Provided*, That nothing
44 herein shall prohibit any school employee from provid-
45 ing specialized health procedures or any other prudent
46 action to aid any person who is in acute physical distress
47 or requires emergency assistance. For the purposes of
48 this section "specialized health procedures" means, but
49 is not limited to, catheterization, suctioning of tracheos-
50 tomy, naso-gastric tube feeding or gastrostomy tube
51 feeding; and "school employee" means teachers as
52 defined in section one, article one of this chapter and
53 aides as defined in section eight, article four-a, chapter
54 eighteen-a of this code.

55 Any school employee who elects to undergo training
56 or retraining to provide, in the manner specified herein,
57 such specialized health care procedures and for whom
58 such selection has been approved by both the principal
59 and the county board, may receive additional pay at the
60 discretion of the county board: *Provided*, That any
61 training may be considered in lieu of required in-service
62 training of such school employee and a school employee

63 cannot be required to elect to undergo the training or
64 retraining: *Provided, however,* That commencing with
65 the first day of July, one thousand nine hundred eighty-
66 nine, any newly employed school employee in the field
67 of special education shall be required to undergo the
68 training and retraining as provided for in this section.

69 Each county school nurse, as designated and defined
70 by this section, shall perform a needs assessment. These
71 nurses shall meet on the basis of the area served by their
72 regional educational service agency, prepare recommen-
73 dations and elect a representative to serve on the council
74 of school nurses.

75 There shall be established a council of school nurses
76 which shall be convened by the state board of education.
77 This council shall prepare a procedural manual and
78 shall provide recommendations regarding a training
79 course to the director of the state department of health
80 who shall consult with the state department of educa-
81 tion. The state department of health shall then have the
82 authority to promulgate rules and regulations to
83 implement the training and to create standards used by
84 those performing specialized health procedures. The
85 council shall meet every two years to review the
86 certification and training program regarding school
87 employees.

88 The state board of education shall work in conjunction
89 with county boards to provide training and retraining
90 every two years as recommended by the council of
91 school nurses and implemented by the state department
92 of health.

CHAPTER 61

(S. B. 159—Originating in the Committee on Education)

[Passed February 28, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-five-b, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and

to amend and reenact sections two, six and seven, article two, chapter eighteen-a of said code, all relating to requiring members of state teachers retirement system to provide written notification of decision not to retire; extending time for terminating continuing contracts of teachers and service personnel; and extending time for notifying school personnel of possible transfer.

Be it enacted by the Legislature of West Virginia:

That section thirty-five-b, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections two, six and seven, article two, chapter eighteen-a of said code be amended and reenacted, all to read as follows:

Chapter

18. Education.

18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-35b. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

1 The Legislature hereby finds and declares that a
2 compelling state interest exists in providing a tempor-
3 ary, early retirement incentives program for encourag-
4 ing the early, voluntary retirement of those public
5 employees who were current, active, contributing
6 members of this retirement system on the first day of
7 April, one thousand nine hundred eighty-eight, in the
8 reduction of the number of such employees and in
9 reduction of governmental costs therefor; that such
10 program constitutes a public purpose; and that the
11 special classifications and differentiations provided in
12 respect of such program are reasonable and equitable

13 ones for the accomplishment of such purpose and
14 program as enacted in Enrolled Committee Substitute
15 for H. B. No. 4672, regular session, one thousand nine
16 hundred eighty-eight, and as clarified and supple-
17 mented herein, retroactive to such beginning date,
18 aforesaid.

19 (a) Beginning on the first day of April, one thousand
20 nine hundred eighty-eight, and continuing through the
21 thirty-first day of December, one thousand nine hundred
22 eighty-eight, (or as extended by contract or by eligibility
23 qualification requirement, as hereinafter specified)
24 eligible members, being those active, contributing
25 members actually and currently employed on such
26 beginning date, retiring pursuant to this section (except
27 disability retirees, but including those so employed on
28 said beginning date and leaving the system during the
29 incentive period and who are eligible for deferred
30 benefits), may elect to participate in this incentives
31 program and may elect any one of the three following
32 incentive options:

33 (1) Retirement incentive option one:

34 For the purpose of computing the member's annuity,
35 the normal final average salary shall be computed and
36 one-eighth thereof shall be added thereto in arriving at
37 the true final average salary for use in actual compu-
38 tation of retirement benefit.

39 (2) Retirement incentive option two:

40 A member may elect a lump sum payment, in addition
41 to his regular retirement annuity, equal to ten percent
42 of his final average salary not to exceed five thousand
43 dollars, and in the case of a deferred retirement electing
44 this option, such lump sum payment shall be receivable
45 and deferred to the time of receipt of such deferred
46 retirement annuity.

47 (3) Retirement incentive option three:

48 A person shall be credited with an additional two
49 years of contributing service and an additional two
50 years of age. The years credited under this option shall
51 in no way add to a member's final average salary factor
52 of computation.

53 (b) Eligible, active, contributing members, aforesaid,
54 employed under contract and rendering services during
55 school year one thousand nine hundred eighty-eight—
56 eighty-nine shall, if retiring pursuant to the provisions
57 of this section and the early retirement incentive
58 program set forth herein, make application for retire-
59 ment, including choice of their respective option, and
60 give notice to their respective county boards of education
61 by the thirty-first day of December, one thousand nine
62 hundred eighty-eight, but shall be permitted to postpone
63 actual retirement until immediately after the close of
64 such contract period and said school year; with proper
65 credit to be granted for such extended period.

66 Also, eligible, active, contributing members employed,
67 not under contract, who desire to retire under this
68 section but who are unable to retire by the thirty-first
69 day of December, one thousand nine hundred eighty-
70 eight, because an element of eligibility for retirement,
71 such as age or other element, will not be met until a date
72 after the thirty-first day of December, one thousand nine
73 hundred eighty-eight, and before the first day of July,
74 one thousand nine hundred eighty-nine, shall be permit-
75 ted to postpone actual retirement until the date of
76 fulfilling such element of eligibility and shall retire on
77 such date, before the temporary retirement incentive
78 program ends on the thirtieth day of June, one thousand
79 nine hundred eighty-nine; with proper credit to be
80 granted for such extended period: *Provided*, That
81 members eligible under the preceding paragraph and
82 this paragraph shall have made application for retire-
83 ment, including choice of their respective option, and
84 given notice to their respective employer by the thirty-
85 first day of December, one thousand nine hundred
86 eighty-eight, although postponing actual retirement, as
87 aforesaid: *Provided, however*, That an application for
88 retirement under the provisions of the preceding
89 paragraph and this paragraph shall be binding upon a
90 member unless the member provides the retirement
91 system and the local board of education or other
92 educational agency with written notification of his or
93 her decision not to retire by the first day of April, one
94 thousand nine hundred eighty-nine: *Provided further*,

95 That an eligible member under this paragraph or the
96 preceding paragraph who has a grievance filed on or
97 before the twenty-second day of February, one thousand
98 nine hundred eighty-nine, or court proceeding which is
99 pending as of the twenty-second day of February, one
100 thousand nine hundred eighty-nine, shall be required to
101 give final notice of decision not to retire by the thirtieth
102 day of June, one thousand nine hundred eighty-nine:
103 *And provided further,* That the state teachers retirement
104 board on or before the seventeenth day of March, one
105 thousand nine hundred eighty-nine, shall provide
106 calculations of anticipated retirement benefits to those
107 members who intend to retire pursuant to the provisions
108 of this section.

109 Eligible members other than those covered under the
110 provisions of the two preceding paragraphs, desiring to
111 retire under this incentive program shall make their
112 option election prior to and take their respective
113 retirement by the close of the thirty-first day of
114 December, one thousand nine hundred eighty-eight.

115 Any eligible member who retires hereunder during
116 the school year (after the first day of July, one thousand
117 nine hundred eighty-eight, and on any date prior to the
118 thirtieth day of June, one thousand nine hundred eighty-
119 nine) shall have included such months of such school
120 year and the salary in respect thereof, if ones of higher
121 salary, in place of and for any like number of months
122 in his or her five-year period for computation of
123 annuities as provided for in section twenty-six of this
124 article.

125 (c) Any member participating in this retirement
126 incentive program is not eligible to accept further
127 employment from the state or any of its political
128 subdivisions: *Provided,* That a person may retire under
129 this section and thereafter serve in an elective office:
130 *Provided, however,* That he shall not receive an incentive
131 annuity under this section during the term of service in
132 said office, but shall receive his or her annuity calcu-
133 lated on regular basis, as if originally taken not under
134 this section but on such regular basis. At the end of such
135 term and cessation of service in such office, such

136 incentive annuity shall resume. In respect of an
137 appointive office, as distinguished from an elective
138 office, any person retiring under this section and
139 thereafter serving in such appointive office shall not
140 receive an incentive annuity under this section during
141 the term of service in said office, but the same shall be
142 suspended during such period: *Provided further*, That at
143 the end of such term and cessation of service in such
144 appointive office the incentive annuity provided for
145 under this section shall be resumed.

146 In any event, an eligible member may retire under
147 this section and thereafter continue to receive his
148 incentive annuity and be employed as a substitute
149 teacher or as adjunct faculty, or as a school service
150 personnel substitute.

151 Any such incentive retirants, under this section, may
152 not thereafter receive such annuity and enter or reenter
153 any governmental retirement system established or
154 authorized to be established by the state, notwithstanding
155 any provision of the code to the contrary, unless
156 required by constitutional provision.

157 The additional annuity allowed for temporary early
158 retirement under these options is intended to be paid
159 from the retirement incentive account hereby created as
160 a special account in the state treasury and from the
161 funds therein established with moneys required to be
162 applied or transferred by heads of spending units from
163 the unused portion of salary and fringe benefits in their
164 budgets accruing in respect to such positions vacated
165 and subsequently canceled under this temporary early
166 retirement program. Salary and fringe benefit moneys
167 actually saved in a particular fiscal year shall constitute
168 the fund source. No such additional annuity shall be
169 disallowed even though initial receipts may not be
170 sufficient, with funds of the system to be applied for
171 such purpose, as for the base annuity.

172 (d) The executive secretary of the retirement system
173 shall provide forms for applicants. Such forms shall
174 include a detailed description of the incentive plan
175 options.

176 The executive secretary of the retirement system shall
177 file a report to the Legislature no later than the fifteenth
178 day of February, one thousand nine hundred eighty-
179 nine, and quarterly thereafter, detailing the number of
180 retirees who have elected to accept early retirement
181 incentive options, the dollar cost to date by option
182 selected, and the projected annual cost through the year
183 two thousand.

184 (e) Within every spending unit, department, board,
185 corporation, commission, or any other agency or entity
186 wherein two or multiples of two members elect to retire
187 either under the temporary early retirement incentives
188 set forth above, or under regular, voluntary retirement,
189 and countable on an agency-wide or entity-wide basis,
190 no more than one of such vacated positions may be filled,
191 with the second position being abolished upon the
192 effective day of the member's retirement: *Provided*,
193 That county boards of education in replacing employees
194 leaving under this temporary early retirement incentive
195 program shall be eligible to replace in that number as
196 authorized by the basic school aid formula and pursuant
197 to those guidelines in respect of number of positions lost
198 or projected to be lost due to declining enrollment,
199 changes in statutes, changes in state appropriations and
200 the other guidelines set forth and contained within said
201 basic school aid formula. The vacant position abolishment
202 requirement shall not apply to elective positions
203 or appointed public officers whose positions are estab-
204 lished by state constitutional or statutory provision. The
205 retirant's employing entity shall decide as to which of
206 the vacated positions made available through special
207 early retirement or through regular, voluntary retire-
208 ment are to be abolished and the head of such spending
209 unit shall immediately notify the state auditor, the
210 legislative auditor, and the commissioner of the depart-
211 ment of finance and administration of the decisions and
212 shall then apply and/or transfer, as aforesaid, the
213 remaining salary and fringe benefit appropriations:
214 *Provided, however*, That this vacant position abolishment
215 provision shall not apply to any county position, other
216 than those under the authority of county boards of
217 education, nor to any position or positions, whether

218 designated by spending unit, department, agency,
219 commission, entity or otherwise, which the governor
220 may exempt or amend under such abolishment provision
221 upon his recommendation that such exemption or
222 amendment is necessary to preserve the health, welfare
223 or safety of the people of West Virginia, and with the
224 prior concurrence of the joint committee on government
225 and finance in such recommendation, after the chairmen
226 thereof shall cause such committee to meet.

227 (f) *Special rule of eighty.* — Any active, contributing
228 member of the retirement system as of the first day of
229 April, one thousand nine hundred eighty-eight, who
230 selects one of the incentive options in this section, may
231 retire under the special early retirement provisions with
232 full pension rights, without reduction of benefits if the
233 sum of such member's age plus years of contributing
234 service equals or exceeds eighty: *Provided*, That such
235 person has at least twenty years of contributing service,
236 up to two years of which may be military service, or
237 prior service, or already paid and credited out-of-state
238 service (if so paid and credited by the first day of April,
239 one thousand nine hundred eighty-eight) or any combi-
240 nation thereof not exceeding an aggregate of two years.

241 (g) *Termination of temporary retirement incentives*
242 *program.* — The right to elect, choose, select or use any
243 of the options, special rule of eighty, or other benefits
244 set forth in this section shall terminate on the thirtieth
245 day of June, one thousand nine hundred eighty-nine.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-2. Employment of teachers; contracts; continuing contract status;
how terminated; dismissal for lack of need; released time;
failure of teacher to perform contract or violation thereof.

§18A-2-6. Continuing contract status for service personnel; termination.

§18A-2-7. Assignment, transfer, promotion, demotion, suspension and
recommendation of dismissal of school personnel by superin-
tendent; preliminary notice of transfer; hearing on the transfer;
proof required.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.

1 Before entering upon their duties, all teachers shall
2 execute a contract with their boards of education, which
3 contract shall state the salary to be paid and shall be
4 in the form prescribed by the state superintendent of
5 schools. Every such contract shall be signed by the
6 teacher and by the president and secretary of the board
7 of education, and when so signed shall be filed, together
8 with the certificate of the teacher, by the secretary of
9 the office of the board.

10 A teacher's contract, under this section, shall be for
11 a term of not less than one nor more than three years;
12 and if, after three years of such employment, the teacher
13 who holds a professional certificate, based on at least a
14 bachelor's degree, has met the qualifications for the
15 same, and the board of education enter into a new
16 contract of employment, it shall be a continuing
17 contract: *Provided*, That any teacher holding a valid
18 certificate with less than a bachelor's degree who is
19 employed in a county beyond the said three-year
20 probationary period shall upon qualifying for said
21 professional certificate based upon a bachelor's degree,
22 if reemployed, be granted continuing contract status:
23 *Provided, however*, That a teacher holding continuing
24 contract status with one county shall be granted
25 continuing contract status with any other county upon
26 completion of one year of acceptable employment if such
27 employment is during the next succeeding school year
28 or immediately following an approved leave of absence
29 extending no more than one year.

30 The continuing contract of any teacher shall remain
31 in full force and effect except as modified by mutual
32 consent of the school board and the teacher, unless and
33 until terminated (1) by a majority vote of the full
34 membership of the board before April first of the then
35 current year, after written notice, served upon the

36 teacher, return receipt requested, stating cause or
37 causes, and an opportunity to be heard at a meeting of
38 the board prior to the board's action thereon, or (2) by
39 written resignation of the teacher before that date,
40 except that for the school year one thousand nine
41 hundred eighty-eight—eighty-nine only, the board shall
42 have until the fourth Monday of April, one thousand
43 nine hundred eighty-nine, to initiate termination of a
44 continuing contract. Such termination shall take effect
45 at the close of the school year in which the contract is
46 so terminated: *Provided*, That the contract may be
47 terminated at any time by mutual consent of the school
48 board and the teacher, and that this section shall not
49 affect the powers of the school board to suspend or
50 dismiss a principal or teacher pursuant to section eight
51 of this article: *Provided, however*, That a continuing
52 contract for any teacher holding a certificate valid for
53 more than one year and in full force and effect during
54 the school year one thousand nine hundred eighty-four,
55 and one thousand nine hundred eighty-five, shall remain
56 in full force and effect: *Provided further*, That a
57 continuing contract shall not operate to prevent a
58 teacher's dismissal based upon the lack of need for the
59 teacher's services pursuant to the provisions of law
60 relating to the allocation to teachers and pupil-teacher
61 ratios. But in case of such dismissal, the teachers so
62 dismissed shall be placed upon a preferred list in the
63 order of their length of service with that board, and no
64 teacher shall be employed by the board until each
65 qualified teacher upon the preferred list, in order, shall
66 have been offered the opportunity for reemployment:
67 *And provided further*, That he has not accepted a
68 teaching position elsewhere. Such reemployment shall
69 be upon a teacher's preexisting continuing contract and
70 shall have the same effect as though the contract had
71 been suspended during the time the teacher was not
72 employed.

73 In the assignment of position or duties of a teacher
74 under said continuing contract, the board shall have
75 authority to provide for released time of a teacher for
76 any special professional or governmental assignment
77 without jeopardizing the contractual rights of such

78 teacher or any other rights, privileges or benefits under
79 the provisions of this chapter.

80 Any teacher who fails to fulfill his contract with the
81 board, unless prevented from so doing by personal
82 illness or other just cause, or unless released from such
83 contract by the board, or who violates any lawful
84 provision thereof, shall be disqualified to teach in any
85 other public school in the state for a period of the next
86 ensuing school year, and the state department of
87 education or board may hold all papers and credentials
88 of such teacher on file for a period of one year for such
89 violation: *Provided*, That marriage of a teacher shall not
90 be considered a failure to fulfill, or violation of, the
91 contract.

92 Any classroom teacher, as defined in section one,
93 article one of this chapter, who desires to resign
94 employment with a board of education or request a leave
95 of absence, such resignation or leave of absence to
96 become effective on or before the fifteenth day of July
97 of the same year and after completion of the employ-
98 ment term, may do so at any time during the school year
99 by written notification thereof, and any such notification
100 received by a board of education shall automatically
101 extend such teacher's public employee insurance
102 coverage until the thirty-first day of August of the same
103 year.

**§18A-2-6. Continuing contract status for service person-
nel; termination.**

1 After three years of acceptable employment, each
2 service personnel employee who enters into a new
3 contract of employment with the board shall be granted
4 continuing contract status: *Provided*, That a service
5 personnel employee holding continuing contract status
6 with one county shall be granted continuing contract
7 status with any other county upon completion of one
8 year of acceptable employment if such employment is
9 during the next succeeding school year or immediately
10 following an approved leave of absence extending no
11 more than one year. The continuing contract of any such

12 employee shall remain in full force and effect except as
13 modified by mutual consent of the school board and the
14 employee, unless and until terminated with written
15 notice, stating cause or causes, to the employee, by a
16 majority vote of the full membership of the board before
17 the first day of April of the then current year, or by
18 written resignation of the employee before that date,
19 except that for the school year one thousand nine
20 hundred eighty-eight—eighty-nine only, the board shall
21 have until the fourth Monday of April, one thousand
22 nine hundred eighty-nine, to initiate termination of a
23 continuing contract. The affected employee shall have
24 the right of a hearing before the board, if requested,
25 before final action is taken by the board upon the
26 termination of such employment.

27 Those employees who have completed three years of
28 acceptable employment as of the effective date of this
29 legislation shall be granted continuing contract status.

**§18A-2-7. Assignment, transfer, promotion, demotion,
suspension and recommendation of dismissal
of school personnel by superintendent;
preliminary notice of transfer; hearing on
the transfer; proof required.**

1 The superintendent, subject only to approval of the
2 board, shall have authority to assign, transfer, promote,
3 demote or suspend school personnel and to recommend
4 their dismissal pursuant to provisions of this chapter.
5 However, an employee shall be notified in writing by the
6 superintendent on or before the first Monday in April
7 if he is being considered for transfer or to be trans-
8 ferred, except that for the school year one thousand nine
9 hundred eighty-eight—eighty-nine only, the superin-
10 tendent shall have until the fourth Monday of April to
11 provide an employee with such written notice. Any
12 teacher or employee who desires to protest such
13 proposed transfer may request in writing a statement
14 of the reasons for the proposed transfer. Such statement
15 of reasons shall be delivered to the teacher or employee
16 within ten days of the receipt of the request. Within ten
17 days of the receipt of the statement of the reasons, the

18 teacher or employee may make written demand upon
19 the superintendent for a hearing on the proposed
20 transfer before the county board of education. The
21 hearing on the proposed transfer shall be held on or
22 before the first Monday in May, except that for the
23 school year one thousand nine hundred eighty-eight—
24 eighty-nine only, the hearing shall be held on or before
25 the fourth Monday in May, one thousand nine hundred
26 eighty-nine. At the hearing, the reasons for the proposed
27 transfer must be shown.

28 The superintendent at a meeting of the board on or
29 before the first Monday in May shall furnish in writing
30 to the board a list of teachers and other employees to
31 be considered for transfer and subsequent assignment
32 for the next ensuing school year, except that for the
33 school year one thousand nine hundred eighty-eight--
34 eighty-nine only, the superintendent shall have until the
35 fourth Monday in May to provide the board with such
36 written list. All other teachers and employees not so
37 listed shall be considered as reassigned to the positions
38 or jobs held at the time of this meeting. The list of those
39 recommended for transfer shall be included in the
40 minute record of such meeting and all those so listed
41 shall be notified in writing, which notice shall be
42 delivered in writing, by certified mail, return receipt
43 requested, to such persons' last known addresses within
44 ten days following said board meeting, of their having
45 been so recommended for transfer and subsequent
46 assignment and the reasons therefor. The superintend-
47 ent's authority to suspend school personnel shall be
48 temporary only pending a hearing upon charges filed by
49 the superintendent with the board of education and such
50 period of suspension shall not exceed thirty days unless
51 extended by order of the board.

52 The provisions of this section respecting hearing upon
53 notice of transfer shall not be applicable in emergency
54 situations where the school building becomes damaged
55 or destroyed through an unforeseeable act and which act
56 necessitates a transfer of such school personnel because
57 of the aforementioned condition of the building.

CHAPTER 62

(Com. Sub. for H. B. 2325—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed April 4, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-one, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, four, six and eight, article nine-d of said chapter; and to further amend said article nine-d by adding thereto two new sections, designated sections fifteen and sixteen, all relating to school facilities generally; reconstituting the school building authority and providing generally therefor; defining certain terms; authorizing authority to contract for professional services; changing manner in which counties are allocated facilities moneys; deleting requirement of legislative appropriation; modifying content of bond resolution; providing for distribution of certain bond revenues on basis of net enrollment and need; allowing percentage of available funds to be used by state board; providing for forfeiture of allocations unexpended by a county after three years; requiring guidelines for certain matters; requiring approved regional facilities plans prior to distribution of moneys; providing generally for submission of facilities plans; outlining certain matters to be included in such plans; and allowing authority to require changes or additions in approved plans.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, two, three, four, six and eight, article nine-d of said chapter be amended and reenacted; and that said article nine-d be further amended by adding thereto two new sections, designated sections fifteen and sixteen, all to read as follows:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

- §18-9D-1. School building authority; powers.
- §18-9D-2. Definitions.
- §18-9D-3. Powers of authority.
- §18-9D-4. School building authority authorized to issue revenue bonds for school building capital improvement projects; refunding bonds authorized.
- §18-9D-6. School building capital improvements fund in state treasury; collections to be paid into special fund; authority to pledge such collections as security for revenue bonds; authority to finance projects on a cash basis.
- §18-9D-8. Issuance of revenue bonds; use of proceeds; bonds exempt from taxation.
- §18-9D-15. Legislative intent; distribution of money.
- §18-9D-16. Facilities plans generally; need-based eligibility.

§18-9D-1. School building authority; powers.

1 The school building authority shall consist of eight
2 persons, of whom one shall be the state superintendent
3 of schools, ex officio; three shall be members of the state
4 board of education, elected by the state board; and four
5 shall be citizens of the state, appointed by the governor,
6 by and with the advice and consent of the Senate, who
7 are knowledgeable in matters relevant to the issues
8 addressed by the authority.

9 The citizen appointments shall be made as soon as
10 possible after the effective date of this section, and no
11 two citizen appointees shall be residents within the same
12 region. Two of the initial appointments shall be for two-
13 year terms, and two shall be for four-year terms, with
14 all successive appointments being for four-year terms.
15 Until such appointments take effect, the state board as
16 constituted under the provisions of section one, article
17 two of this chapter may act as the authority with such
18 power as was granted them under the prior enactment
19 of this section.

20 The school building authority shall meet at least
21 quarterly, and the citizen members shall be reimbursed
22 for reasonable and necessary expenses actually incurred
23 in the performance of their official duties from funds
24 appropriated or otherwise made available for such
25 purposes upon submission of an itemized statement
26 therefor. The state superintendent of schools shall serve
27 as president of the authority.

28 The acts performed by the members of the state board
29 of education in their capacity as members of the school
30 building authority are solely the acts of the authority.

§18-9D-2. Definitions.

1 The following terms, wherever used or referred to in
2 this article, shall have the following meanings, unless a
3 different meaning clearly appears from the context:

4 (1) "Authority" means the school building authority of
5 West Virginia or, if said authority shall be abolished,
6 any board or officer succeeding to the principal
7 functions thereof, or to whom the powers given to said
8 authority shall be given by law;

9 (2) "Bonds" means bonds issued by the authority
10 pursuant to this article;

11 (3) "Project" or "capital improvement project" means
12 the new construction, major renovation, repair and
13 safety upgrading of facilities, buildings and structures
14 for school purposes including the acquisition of land for
15 current or future use in connection therewith, equip-
16 ment, machinery, furnishings, installation of utilities
17 and other similar items convenient in connection with
18 placing the foregoing into operation, but may not
19 include such items as books, fuel, supplies and other
20 items which are customarily deemed to result in a
21 current operating charge;

22 (4) "Cost of project" means the cost of construction,
23 renovation, repair and safety upgrading of facilities,
24 buildings and structures for school purposes; the cost of
25 land, equipment, machinery, furnishings, installation of
26 utilities and other similar items convenient in connec-
27 tion with placing the foregoing into operation; and the
28 cost of financing, interest during construction, profes-
29 sional service fees and all other charges or expenses
30 necessary, appurtenant or incidental to the foregoing,
31 including the cost of administration of this article;

32 (5) "Revenue" or "revenues" mean moneys deposited
33 in the school building capital improvements fund
34 pursuant to the operation of section ten, article nine-a
35 of this chapter; any moneys received, directly or

36 indirectly, from any source for the use of all or any part
37 of any project completed pursuant to this article; and
38 any other moneys received by the authority for the
39 purposes of this article;

40 (6) "Facilities plan" means the regional plan for
41 school facilities required prior to the distribution of
42 state funds to any county board pursuant to section
43 fifteen; and

44 (7) "Region" means the area encompassed within and
45 serviced by a regional educational service agency
46 established pursuant to section twenty-six, article two of
47 this chapter.

§18-9D-3. Powers of authority.

1 The school building authority has the power:

2 (1) To sue and be sued, plead and be impleaded;

3 (2) To have a seal and alter the same at pleasure;

4 (3) To contract to acquire and to acquire, in the name
5 of the authority by purchase, lease-purchase, or other-
6 wise, real property or rights or easements necessary or
7 convenient for its corporate purposes and to exercise the
8 power of eminent domain to accomplish such purposes;

9 (4) To acquire, hold and dispose of real and personal
10 property for its corporate purposes;

11 (5) To make bylaws for the management and rule of
12 its affairs;

13 (6) With the consent of the attorney general of the
14 state of West Virginia, to use the facilities, office,
15 assistants and employees of the attorney general in all
16 legal matters relating to or pertaining to the authority;

17 (7) To appoint officers, agents and employees and fix
18 their compensation;

19 (8) To make contracts and to execute all instruments
20 necessary or convenient to effectuate the intent of, and
21 to exercise the powers granted to it by, this article;

22 (9) To renegotiate all contracts entered into by it
23 whenever, due to a change in situation, it appears to the
24 authority that its interests will be best served;

25 (10) To acquire by purchase, eminent domain or
26 otherwise all real property or interests therein necessary
27 or convenient to accomplish the purposes of this article;

28 (11) To require proper maintenance and insurance of
29 any project authorized hereunder;

30 (12) To charge rent for the use of all or any part of
31 a project or buildings at any time financed, constructed,
32 acquired or improved in whole or in part with the
33 revenues of the authority;

34 (13) To acquire land, buildings and capital improve-
35 ments to existing school buildings and property, by lease
36 from a private or public lessor for a term not to exceed
37 twenty-five years, with or without an option to purchase
38 pursuant to an investment contract with said lessor, for
39 use as public school facilities on such terms and
40 conditions as may be determined to be in the best
41 interests of the authority and consistent with the
42 purposes of this article;

43 (14) To accept and expend any gift, grant, contribu-
44 tion, bequest or endowment of money to, or for the
45 benefit of, the authority, from the state of West Virginia
46 or any other source for any or all of the purposes
47 specified in this article or for any one or more of such
48 purposes as may be specified in connection with such
49 gift, grant, contribution, bequest or endowment;

50 (15) To enter on any lands and premises for the
51 purpose of making surveys, soundings and
52 examinations;

53 (16) To contract for architectural, engineering or
54 other professional services deemed necessary or econom-
55 ical by the authority to provide consultative or other
56 services to any regional educational service agency or
57 county board requesting professional services offered by
58 the authority, to evaluate any facilities plan or any
59 project encompassed therein, to inspect existing facili-
60 ties or any project that has received or may receive
61 funding from the authority, or to perform any other
62 service deemed by the authority to be necessary or
63 economical. Assistance to the region or district may

64 include the development of preapproved systems, plans,
65 designs, models or documents; advice or oversight on
66 any plan or project; or any other service that may be
67 efficiently provided to regional educational service
68 agencies or county boards by the authority; and

69 (17) To do all things necessary or convenient to carry
70 out the powers given in this article.

**§18-9D-4. School building authority authorized to issue
revenue bonds for school building capital
improvement projects; refunding bonds
authorized.**

1 The school building authority may by resolution, in
2 accordance with the provisions of this article, issue
3 revenue bonds of the authority from time to time, either
4 to finance the cost of school building capital improve-
5 ment projects for public schools in this state, or to
6 refund, at the discretion of the authority, bonds issued
7 and outstanding under and pursuant to the provisions
8 of this article. The principal of, interest and redemption
9 premium, if any, on such bonds shall be payable solely
10 from the special fund herein provided for such payment.

**§18-9D-6. School building capital improvements fund in
state treasury; collections to be paid into
special fund; authority to pledge such collec-
tions as security for revenue bonds; author-
ity to finance projects on a cash basis.**

1 There is created in the state treasury a school building
2 capital improvements fund to be expended by the
3 authority for the purposes of this article.

4 The school building authority shall have authority to
5 pledge all or such part of the revenues paid into the
6 school building capital improvements fund as may be
7 needed to meet the requirements of any revenue bond
8 issue or issues authorized by this article, including the
9 payment of principal of, interest and redemption
10 premium, if any, on such revenue bonds and the
11 establishing and maintaining of a reserve fund or funds
12 for the payment of the principal of, interest and
13 redemption premium, if any, on such revenue bond issue

14 or issues when other moneys pledged may be insufficient
15 therefor, including such additional protective pledge of
16 revenues as the authority in its discretion may provide
17 by resolution authorizing the issue of such bonds and in
18 any trust agreement made in connection therewith. The
19 authority may further provide in such resolution and in
20 such trust agreement for such priorities on the revenues
21 paid into such school building capital improvements
22 fund as may be necessary for the protection of the prior
23 rights of the holders of bonds issued at different times
24 under the provisions of this article.

25 Any balance remaining in the school building capital
26 improvements fund after the authority has issued bonds
27 authorized by this article, and after the requirements of
28 all funds including reserve funds established in connec-
29 tion with the bonds issued pursuant to this article have
30 been satisfied, may be used for the redemption of any
31 of the outstanding bonds issued hereunder which by
32 their terms are then redeemable, or for the purchase of
33 such bonds at the market price, but not exceeding the
34 price, if any, at which such bonds shall in the same year
35 be redeemable, and all bonds redeemed or purchased
36 shall forthwith be canceled and shall not again be
37 issued.

38 The school building authority, in its discretion, may
39 use the moneys in the school building capital improve-
40 ments fund to finance the cost of projects on a cash basis.
41 Any pledge of moneys in such fund for revenue bonds
42 shall be a prior and superior charge on such fund over
43 the use of any of the moneys in such fund to pay for the
44 cost of any project on a cash basis: *Provided*, That any
45 expenditures from such fund, other than for the
46 retirement of revenue bonds, may only be made by the
47 authority in accordance with the provisions of this
48 article.

**§18-9D-8. Issuance of revenue bonds; use of proceeds;
bonds exempt from taxation.**

1 The issuance of revenue bonds under the provisions of
2 this article shall be authorized from time to time by
3 resolution or resolutions of the school building authority,

4 which shall set forth the proposed projects and provide
5 for the issuance of bonds in amounts sufficient, when
6 sold as hereinafter provided, to provide moneys deemed
7 by the authority sufficient to pay such costs, less the
8 amounts of any other funds available for said costs or
9 from any appropriation, grant or gift therefor: *Provided,*
10 That bond revenues which are to be distributed in
11 accordance with section fifteen of this article shall not
12 be required to set forth the proposed projects in the
13 resolution. Such resolution shall prescribe the rights and
14 duties of the bondholders and the school building
15 authority, and for such purpose may prescribe the form
16 of the trust agreement hereinafter referred to. The
17 bonds may be issued from time to time, in such amounts,
18 shall be of such series, bear such date or dates, mature
19 at such time or times not exceeding forty years from
20 their respective dates, bear interest at such rate or rates;
21 be in such denominations; be in such form, either coupon
22 or registered, carrying such registration, exchangeabil-
23 ity and interchangeability privileges; be payable in such
24 medium of payment and at such place or places within
25 or without the state; be subject to such terms of
26 redemption at such prices not exceeding one hundred
27 five percent of the principal amount thereof; and be
28 entitled to such priorities on the revenues paid into the
29 school building authority capital improvements fund as
30 may be provided in the resolution authorizing the
31 issuance of the bonds or in any trust agreement made
32 in connection therewith. The bonds shall be signed by
33 the governor, and by the president or vice president of
34 the authority, under the great seal of the state, attested
35 by the secretary of state, and the coupons attached
36 thereto shall bear the facsimile signature of the
37 president or vice president of the authority. In case any
38 of the officers whose signatures appear on the bonds or
39 coupons cease to be such officers before the delivery of
40 such bonds, such signatures shall nevertheless be valid
41 and sufficient for all purposes the same as if such
42 officers had remained in office until such delivery. Such
43 revenue bonds shall be sold in such manner as the
44 authority may determine to be for the best interests of
45 the state.

46 Any pledge of revenues for such revenue bonds made
47 by the school building authority shall be valid and
48 binding between the parties from the time the pledge
49 is made; and the revenues so pledged shall immediately
50 be subject to the lien of such pledge without any further
51 physical delivery thereof or further act. The lien of such
52 pledge shall be valid and binding against all parties
53 having claims of any kind in tort, contract or otherwise,
54 irrespective of whether such parties have notice of the
55 lien of such pledge, and such pledge shall be a prior and
56 superior charge over any other use of such revenues so
57 pledged.

58 The proceeds of such bonds shall be used solely for the
59 purpose or purposes as may be generally or specifically
60 set forth in the resolution authorizing those bonds and
61 shall be deposited in the state treasury in a special fund
62 to be disbursed as provided by law for the disbursement
63 of any other state funds. If the proceeds of such bonds,
64 by error in calculations or otherwise, shall be less than
65 the cost of any projects specifically set forth in the
66 resolution, additional bonds may in like manner be
67 issued to provide the amount of the deficiency; and
68 unless otherwise provided for in the resolution or trust
69 agreement hereinafter mentioned, such additional bonds
70 shall be deemed to be of the same issue, and shall be
71 entitled to payment from the same fund, without
72 preference or priority, as the bonds before issued for
73 such projects. If the proceeds of bonds issued for such
74 projects exceed the cost thereof, the surplus may be used
75 for such other projects as the school building authority
76 may determine or in such other manner as the resolution
77 authorizing such bonds may provide. Prior to the
78 preparation of definitive bonds, the authority may,
79 under like restrictions, issue temporary bonds with or
80 without coupons, exchangeable for definitive bonds upon
81 the issuance of such definitive bonds.

82 After the issuance of any of such revenue bonds, the
83 revenues pledged therefor shall not be reduced as long
84 as any of such revenue bonds are outstanding and
85 unpaid except under such terms, provisions and condi-
86 tions as shall be contained in the resolution, trust

87 agreement or other proceedings under which such
88 revenue bonds were issued.

89 Such revenue bonds and the revenue refunding bonds,
90 and bonds issued for combined purposes shall, together
91 with the interest thereon, be exempt from all taxation
92 by the state of West Virginia, or by any county, school
93 district, municipality or political subdivision thereof.

§18-9D-15. Legislative intent; distribution of money.

1 (a) It is the intent of the Legislature to empower the
2 school building authority to facilitate and provide state
3 funds for the construction and maintenance of school
4 facilities so as to meet the educational needs of the
5 people of this state in an efficient and economical
6 manner. The authority shall make funding determina-
7 tions in accordance with the provisions of this article
8 and shall assess existing school facilities and each
9 facilities plan in relation to the needs of the individual
10 student, the general school population, the communities
11 served by the facilities, and facility needs statewide.

12 (b) An amount that is no more than three percent of
13 the sum of moneys that are determined by the authority
14 to be available for distribution during the then current
15 fiscal year from (1) the increase in local share paid into
16 the school building capital improvements fund pursuant
17 to section ten, article nine-a of this chapter, (2) the
18 issuance of revenue bonds for which such increase in
19 local share is pledged as security, and (3) any other
20 moneys received by the authority may be allocated and
21 may be expended by the authority for projects that
22 service the educational community statewide or, upon
23 application by the state board, for educational programs
24 that are under the jurisdiction of the state board.

25 Fifty percent of the remaining available funds shall
26 be allocated and distributed to each county board on the
27 basis of its net enrollment as defined in section two,
28 article nine-a of this chapter: *Provided*, That such
29 moneys shall not be distributed to any county board
30 whose region does not have an approved facilities plan
31 or to any county board that is not prepared to commence
32 expenditures of such funds during the fiscal year in

33 which the moneys are distributed: *Provided, however,*
34 That any moneys allocated to a county board and not
35 distributed to that county board shall be redistributed
36 on the basis of net enrollment to those county boards
37 then eligible for the receipt of net enrollment distribu-
38 tions in that fiscal year. Prior to any allocation and
39 distribution of the fifty percent based on net enrollment
40 in a subsequent fiscal year, the authority shall deduct
41 from the fifty percent determination any moneys
42 allocated and not distributed to a county board during
43 the preceding three fiscal years upon written notice
44 from any county board that such county board is
45 prepared to expend such amount in the then current
46 fiscal year and shall distribute such moneys accordingly.
47 The balance shall then be allocated and distributed
48 among all the eligible counties.

49 The remaining fifty percent of moneys available for
50 distribution shall be allocated and expended on the basis
51 of need and efficient use of resources, such basis to be
52 determined by the authority in accordance with the
53 provisions of section sixteen of this article.

54 No local matching funds shall be required under the
55 provisions of this subsection, and any county board may
56 use the state moneys provided herein in conjunction with
57 local funds derived from bonding or other source. Any
58 county board may dedicate any allocations of state
59 moneys pursuant to this subsection to the payment of
60 local bonds used for purposes encompassed in an
61 approved facilities plan or for the payment of bonds that
62 are issued by the authority for the benefit of that county
63 that are in addition to the bond moneys distributed in
64 accordance with this subsection.

65 Moneys made available pursuant to this subsection
66 that shall be expended on projects that benefit more
67 than one district shall be apportioned among the
68 districts in accordance with the formula encompassed in
69 that portion of the facilities plan that addresses the
70 project designed to benefit more than one district.

71 (c) To encourage regional educational service agencies
72 and county boards to proceed promptly with facilities

73 planning and to prepare for the expenditure of any state
74 moneys derived from the sources described in subsection
75 (b) of this section, any county board failing to expend
76 money within three years of the allocation thereto shall
77 forfeit such allocation and thereafter shall be ineligible
78 for further net enrollment or other allocations pursuant
79 to subsection (b) until the county board is ready to
80 expend funds in accordance with an approved facilities
81 plan. Any amount so forfeited shall be added to the total
82 funds available for allocation and distribution in the
83 next ensuing fiscal year.

84 (d) Distribution to the county boards may be in a
85 lump sum or in accordance with a schedule of payments
86 adopted by the authority pursuant to such guidelines as
87 it shall adopt.

**§18-9D-16. Facilities plans generally; need-based
eligibility.**

1 (a) To facilitate the goals as stated in section fifteen
2 of this article and to assure the prudent and resourceful
3 expenditure of state funds, each regional educational
4 service agency created pursuant to section twenty-six,
5 article two of this chapter shall submit a region-wide
6 facilities plan that addresses the facilities needs of each
7 district within the region pursuant to such guidelines as
8 shall be adopted by the authority in accordance with this
9 section. Any project receiving funding shall be in
10 furtherance of such approved facilities plan.

11 (b) To assure efficiency and productivity in the
12 project approval process, the facilities plan shall be
13 submitted only after a preliminary plan, a plan outline
14 or a proposal for a plan has been submitted to the
15 authority. Selected members of the authority, which
16 selection shall include citizen members, shall then meet
17 promptly with those persons designated by the regional
18 educational service agency, including one person from
19 each county within the region, to attend the facilities
20 plan consultation. The purpose of the consultation is to
21 assure understanding of the general goals of the school
22 building authority and the specific goals encompassed

23 in the following criteria and to discuss ways the plan
24 may be structured to meet those goals.

25 (c) The guidelines for the development of a facilities
26 plan shall state the manner, timeline and process for
27 submission of any plan to the authority; such project
28 specifications as may be deemed appropriate by the
29 authority; and those matters which are deemed by the
30 authority to be important reflections of how the project
31 will further the overall goals of the authority.

32 The guidelines regarding submission of the plans shall
33 include requirements for public hearings, comments or
34 other means of providing broad-based input within a
35 reasonable time period as the authority may deem
36 appropriate. The submission of each facilities plan shall
37 be accompanied by a synopsis of all comments received
38 and a formal comment by each county board included
39 in the region. The guidelines regarding project specifi-
40 cations may include such matters as energy efficiency,
41 preferred siting, construction materials, maintenance
42 plans or any other matter related to how the capital
43 improvement project is to proceed. The guidelines
44 pertaining to quality education shall require that a
45 facilities plan address how the current facilities do not
46 meet and the proposed plan and any project thereunder
47 does meet the following goals:

48 (1) Student health and safety;

49 (2) Economies of scale, including compatibility with
50 similar schools that have achieved the most economical
51 organization, facility utilization and pupil-teacher
52 ratios;

53 (3) Reasonable travel time and practical means of
54 addressing other demographic considerations;

55 (4) Multicounty and regional planning to achieve the
56 most effective and efficient instructional delivery
57 system;

58 (5) Curricular improvement and diversification,
59 including computerization and technology and advanced
60 senior courses in science, mathematics, language arts
61 and social studies;

62 (6) Innovations in education such as year-round
63 schools and community-based programs; and

64 (7) Adequate space for projected student enrollments.

65 If the project is to benefit more than one county in the
66 region, the facilities plan shall state the manner in
67 which the cost and funding of the project shall be
68 apportioned among the counties.

69 (d) Each plan shall prioritize all the projects both
70 within a county and among the counties, which priority
71 list shall be the basis for determining how available
72 funds shall be expended.

73 (e) Each plan shall include the objective means to be
74 utilized in evaluating implementation of the overall plan
75 and each project included therein. Such evaluation shall
76 measure each project's furtherance of each goal stated
77 in this section and any guidelines adopted hereunder, as
78 well as the overall success of any project as it relates
79 to the facilities plan of its region and the overall goals
80 of the authority.

81 (f) The authority may adopt guidelines for requiring
82 that a regional educational service agency modify,
83 update, supplement or otherwise submit changes or
84 additions to an approved plan and shall provide
85 reasonable notification and sufficient time for such
86 change or addition.

CHAPTER 63

(H. B. 2029—By Delegates Love and Ashley)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article ten-c,
chapter eighteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to membership in the southern regional education
compact continued.

Be it enacted by the Legislature of West Virginia:

That section three, article ten-c, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10C. THE SOUTHERN REGIONAL EDUCATION COMPACT.

§18-10C-3. Membership in compact continued; findings.

1 After having conducted a performance and fiscal
2 audit through its joint committee on government
3 operations, pursuant to section nine, article ten, chapter
4 four of this code, the Legislature hereby finds and
5 declares that West Virginia should remain a member of
6 the compact. Accordingly, notwithstanding the provi-
7 sions of section four, article ten, chapter four of this
8 code, West Virginia shall continue to be a member of
9 this compact until the first day of July, one thousand
10 nine hundred ninety-four.

CHAPTER 64

(Com. Sub. for S. B. 420—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to repeal articles twenty-two, twenty-four, twenty-six, twenty-six-b, twenty-six-c and twenty-six-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section ten, article two, chapter two of said code; to amend and reenact section eleven, article one, chapter nine-a of said code; to amend and reenact section two, article five, chapter ten of said code; to amend and reenact sections one, three and ten, article two, chapter eighteen of said code; to amend and reenact sections two, three, four and five, article two-b of said chapter; to further amend said chapter eighteen by adding thereto a new article, designated article ten-h; to amend and reenact sections one, two, three and six, article twenty-six-a of said chapter; to amend and reenact section five, article twenty-nine of said chapter; to amend and

reenact sections five and thirteen, article thirty of said chapter; to further amend said code by adding thereto two new chapters, designated chapters eighteen-b and eighteen-c; and to amend and reenact section four, article three-b, chapter sixty-one of said code, all relating to the reorganization of higher education; clarifying the meaning of board of regents in rules for construction of statutes; changing membership on the advisory council to the department of veterans' affairs, the educational broadcasting authority and the state board of education; authorizing the state board of education to promulgate rules for granting certificates and awards with respect to certain vocational-technical-occupational programs; abolishing the state board of vocational education effective the first day of July, one thousand nine hundred ninety; establishing the joint commission on vocational-technical-occupational education effective the first day of July, one thousand nine hundred eighty-nine; providing that the joint commission shall be the sole agency for administering vocational-technical-occupational education; establishing implementation team to review the work of the joint commission and requiring certain reports; establishing area vocational education program funds for secondary vocational education and post-secondary vocational education; authorizing certain boards to expend funds; vesting title to property in certain boards effective the first day of July, one thousand nine hundred eighty-nine; creating the Albert Yanni programs of excellence in vocational-technical education; establishing an academy for talented vocational-technical education students and administrators; establishing a scholarship program for secondary vocational-technical education graduates and educators for enumerated purposes; establishing an interdisciplinary doctoral program for vocational-technical education; establishing an effective schools program in vocational-technical education; establishing a unified technology transfer program; placing state autism training center under jurisdiction of board of trustees; providing that same hearing examiner may not hear grievance brought before education employees grievance board by former grievant; changing compo-

sition and quorum of board of directors of the West Virginia higher education tuition trust; changing conditions precedent to administration of trust; creating the University of West Virginia board of trustees and the board of directors of the state college system; providing definitions and assigning the state institutions of higher education to the state university system or the state college system and providing for the governance of each system by separate governing boards; transferring the powers, duties, authorities, orders, resolutions, rules, titles to property, valid agreements and obligations, and statutory powers and duties of the board of regents to the appropriate governing boards and abolishing the board of regents; placing board of trustees and board of directors under the jurisdiction of the department of education and the arts; providing for coordination of policies and purposes of state university system and state college system by secretary of education and the arts; requiring study of certain institutions of higher education for the purpose of determining their role and mission within the reorganized system of higher education; providing for review of rules promulgated by board of trustees and board of directors; transferring supervision of state institutions of higher education from board of regents to appropriate governing board; requiring each governing board to develop a system of comparison information and allocation decisions for implementation; providing powers and duties of governing boards and institutional presidents; establishing a task force on faculty salaries and resource allocation; providing for composition, appointment, terms and qualifications of members of University of West Virginia board of trustees; providing for meetings and compensation; providing additional duties of board of trustees; changing name of college of graduate studies to University of West Virginia college of graduate studies and transferring operation of the institution to the board of trustees; transferring operation of West Virginia school of osteopathic medicine to board of trustees; providing for composition, appointment, terms and qualifications of members of board of directors of the state college system; providing

for meetings and compensation; providing additional duties of board of directors; providing for the continuance and establishment of community colleges, technical courses and job training and establishing eight community college service areas; establishing a separate division of community colleges within the state college system and creating position of vice chancellor for community colleges; moving the authority to adopt rules for accreditation of private proprietary institutions awarding specialized associate degrees from the state board of education to the board of directors of state college system and providing penalties for violations; providing definition for proprietary schools that award specialized associate degrees; providing remedies for students under consumer laws; establishing the West Virginia joint commission for vocational-technical-occupational education subject to the jurisdiction of the department of education and the arts; providing definitions; providing for composition, terms and qualifications of members of joint commission; providing for meetings, compensation and duties and responsibilities of members of the joint commission; providing for general administration of board of trustees and board of directors; providing for employment of chancellors, senior administrator and staff for the boards; appointing director of state department of health as vice chancellor for health affairs and requiring study of role and mission of state medical schools for governor and Legislature; enumerating powers and duties of senior administrator; authorizing board of trustees and board of directors to participate in reciprocal regional and interstate higher educational agreements; authorizing board of trustees and board of directors to apply for, accept, administer and expend funds from federal and private grants, appropriations, allocations and programs for higher education and establishing related powers and duties; authorizing board of trustees and board of directors to appoint and compensate security officers; granting powers, authority and responsibilities of law-enforcement officers to security officers and establishing eligibility for law-enforcement training at an approved academy; authorizing the acquisition,

operation and regulation of parking areas, roads and facilities at state institutions of higher education and providing civil and criminal penalties for violations; providing for accreditation of institutions of higher education and standards for degrees; providing three areas for budget appropriations within the system of higher education; providing for allocation and disposition of appropriated funds; authorizing the board of trustees and the board of directors to contract for programs, services and facilities; providing for purchase or acquisition of materials, supplies, equipment and printing through the senior administrator; permitting private institutions of higher education to join as purchasers and to be responsible for payment of purchases; eliminating reference to board of regents in various code provisions and replacing it with reference to governing boards; providing that members of advisory councils of faculty may be elected by ballot process; providing for proportional representation on advisory councils of students; increasing membership on advisory councils of classified employees; increasing membership on advisory council on federal resources and increasing mileage allowance; eliminating reference to West Virginia Anatomical Board and replacing it with reference to the University of West Virginia Anatomical Board; seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to granting sabbatical leaves, effect of leave of absence on academic tenure and rank, notice to probationary faculty members of retention or nonretention and hearing procedures, and faculty and classified employee continuing education and development program; defining Marshall University as a doctoral institution and placing it on the minimum salary schedule for full-time faculty at doctoral institutions; providing a five percent salary increase for faculty beginning the first day of January, one thousand nine hundred ninety, and providing for the distribution of such salary increase; providing for the employment of

faculty after the first day of July, one thousand nine hundred eighty-nine, and assigning them to the appropriate salary schedule; eliminating reference to board of regents and replacing it with reference to appropriate governing board in code provisions relating to merit increases and salary adjustment, additional employment by mutual agreement and classified employee salary schedule and classification system; changing definition of classified employee and adding new definition for job and grade classification; redesignating chapter number for higher education classified employee monthly salary schedule; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to establishment of personnel classification system, assignment to classification and to salary schedule and classified employee salary; requiring governing boards to establish by rule an equitable system of job classifications for review by secretary of education and the arts and for implementation by the first day of July, one thousand nine hundred ninety; requiring governing boards to notify employees of assignment to classification, job title, pay grade and providing for appeal procedures; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to classified employees salary, annual review of classifications and classification system, conferences regarding personnel classification, hirings after effective date and additional employment by mutual agreement; establishing effective date of the first day of July, one thousand nine hundred eighty-nine, for classified employee salary and experience increment; providing five percent salary increase and method of distributing such increase for classified staff beginning on the first day of January, one thousand nine hundred ninety; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to fees and other money collected at state institutions of higher education, enrollment, tuition and other fees at educational institutions, refund of fees, higher education resource fee, faculty improvement fee and medical education fee; establishing a health

professions education fee; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to fee waivers—undergraduate schools, fee waivers—professional and graduate schools and tuition and fee waivers for children and spouses of officers and firefighters killed in the line of duty; providing that additional registration fees collected from students shall be paid into special capital improvements fund which shall be expended jointly by the governing boards; redesignating chapter reference in code provision relating to authority to excuse students in certain educational programs from payment of enrollment fees; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to disposition and use of student union fees, issuance of revenue bonds, fees and money derived from athletic contests, fees from operation of dormitories, faculty homes, dining halls and cafeterias, bookstores, changing disposition of end of year bookstore moneys, authority of educational institutions to provide special services and programs, collection and disposition of fees; providing that funds collected from certain sources and interest revenue generated by special student fee account shall be expended only at or for the institution where such funds or fee was collected; creating a center for regional progress and providing for a director, powers and mission and purpose; redesignating chapter reference for code provisions relating to institute for public affairs and institute for international trade development; providing for private nonprofit research and development corporations under agreements with state institutions of higher education; research and development agreements for state institutions of higher education; creating a “High-Tech 2000” program and foundation for science and technology to assist business and industry in adopting new technology; redesignating chapter reference in code provisions relating to authorization to sell West Virginia University poultry farm properties located in Morgantown and authorization to sell West Virginia University vacant lot located in Morgantown and biological research station located in

Terra Alta; providing that senior administrator shall administer programs for student financial assistance, guaranteed student loans and medical student loans; authorizing board of trustees to contract for training of students in optometry; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to trespass on student residence premises or student facility premises of an institution of higher education.

Be it enacted by the Legislature of West Virginia:

That articles twenty-two, twenty-four, twenty-six, twenty-six-b, twenty-six-c and twenty-six-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section ten, article two, chapter two of said code be amended and reenacted; that section eleven, article one, chapter nine-a of said code be amended and reenacted; that section two, article five, chapter ten of said code be amended and reenacted; that sections one, three and ten, article two, chapter eighteen of said code be amended and reenacted; that sections two, three, four and five, article two-b of said chapter be amended and reenacted; that said chapter eighteen be further amended by adding thereto a new article, designated article ten-h; that sections one, two, three and six, article twenty-six-a of said chapter be amended and reenacted; that section five, article twenty-nine of said chapter be amended and reenacted; that sections five and thirteen, article thirty of said chapter be amended and reenacted; that said code be further amended by adding thereto two new chapters, designated chapters eighteen-b and eighteen-c; and that section four, article three-b, chapter sixty-one of said code be amended and reenacted, all to read as follows:

Chapter

- 2. Common Law, Statutes, Legal Holidays, Definitions and Legal Capacity.**
- 9A. Veterans' Affairs.**
- 10. Public Libraries; Public Recreation; Athletic Establishments; Monuments and Memorials; Roster of Servicemen; Educational Broadcasting Authority.**
- 18. Education.**
- 18B. Higher Education.**
- 18C. Student Loans; Scholarships and State Aid.**
- 61. Crimes and Their Punishment.**

**CHAPTER 2. COMMON LAW, STATUTES,
LEGAL HOLIDAYS, DEFINITIONS
AND LEGAL CAPACITY.**

**ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS;
CONSTRUCTION OF STATUTES; DEFINITIONS.**

§2-2-10. Rules for construction of statutes.

1 The following rules shall be observed in the construc-
2 tion of statutes, unless a different intent on the part of
3 the Legislature be apparent from the context:

4 (a) A word importing the singular number only may
5 be applied to several persons or things, as well as to one
6 person or thing; a word importing the plural number
7 only may be applied to one person or thing as well as
8 to several; and a word importing the masculine gender
9 only may be applied to females as well as males;

10 (b) Words purporting to give a joint authority to three
11 or more persons confer such authority upon a majority
12 of them, and not upon any less number;

13 (c) The words "written" or "in writing" include any
14 representation of words, letters or figures, whether by
15 printing, engraving, writing or otherwise. But when the
16 signature of any person is required, it must be in his
17 or her own proper handwriting, or his or her mark,
18 attested, proved or acknowledged;

19 (d) The words "preceding," "succeeding" or "follow-
20 ing" used in reference to any section or sections of a
21 chapter or statute, mean next preceding, next succeed-
22 ing or next following that in which such reference is
23 made, unless a different interpretation be required by
24 the context;

25 (e) An officer shall be deemed to have qualified when
26 he or she has done all that is required by law to be done
27 before proceeding to exercise the authority and dis-
28 charge the duties of his or her office;

29 (f) The words "the governor" are equivalent to "the
30 executive of the state" or "the person having the
31 executive power";

32 (g) "Justice" or "justices" as used in article one,
33 chapter fifty-one of this code and in other references to
34 a member or members of the supreme court of appeals
35 shall mean and apply to a judge or the judges of said
36 court as provided for in the constitution of the state. The
37 word "justice" in any other context is equivalent to the
38 words "justice of the peace," and the word "notary" is
39 equivalent to "notary public";

40 (h) The word "state," when applied to a part of the
41 United States and not restricted by the context, includes
42 the District of Columbia and the several territories, and
43 the words "United States" also include the said district
44 and territories;

45 (i) The word "person" or "whoever" shall include
46 corporations, societies, associations and partnerships, if
47 not restricted by the context;

48 (j) The words "personal representative" include the
49 executor of a will, the administrator of the estate of a
50 deceased person, the administrator of such estate with
51 the will annexed, the administrator de bonis non of such
52 estate, whether there be a will or not, the sheriff or other
53 officer lawfully charged with the administration of the
54 estate of a deceased person, and every other curator or
55 committee of a decedent's estate for or against whom
56 suits may be brought for causes of action which accrued
57 to or against such decedent;

58 (k) The word "will" embraces a testament, a codicil,
59 an appointment by will or writing in the nature of a will
60 in exercise of a power, also any other testamentary
61 disposition;

62 (l) The word "judgment" includes decrees and orders
63 for the payment of money or the conveyance or delivery
64 of land or personal property, or some interest therein,
65 or any undertaking, bond or recognizance which has the
66 legal effect of a judgment;

67 (m) The words "under disability" include persons
68 under the age of eighteen years, insane persons, and
69 convicts while confined in the penitentiary;

70 (n) The words "insane person" include everyone who

71 has mental illness as defined in section two, article one,
72 chapter twenty-seven of this code;

73 (o) The word "convict" means a person confined in the
74 penitentiary of this or any other state, or of the United
75 States;

76 (p) The word "land" or "lands" and the words "real
77 estate" or "real property" include lands, tenements and
78 hereditaments, all rights thereto and interests therein
79 except chattel interests;

80 (q) The words "personal estate" or "personal property"
81 include goods, chattels, real and personal, money,
82 credits, investments and the evidences thereof;

83 (r) The word "property" or "estate" embraces both
84 real and personal estate;

85 (s) The word "offense" includes every act or omission
86 for which a fine, forfeiture or punishment is imposed by
87 law;

88 (t) The expression "laws of the state" includes the
89 constitution of the state and the constitution of the
90 United States, and treaties and laws made in pursuance
91 thereof;

92 (u) The word "town" includes a city, village or town,
93 and the word "council," any body or board, whether
94 composed of one or more branches, who are authorized
95 to make ordinances for the government of a city, town
96 or village;

97 (v) When a council of a town, city or village, or any
98 board, number of persons or corporations, are autho-
99 rized to make ordinances, bylaws, rules, regulations or
100 orders, it shall be understood that the same must be
101 consistent with the laws of this state;

102 (w) The words "county court" include any existing
103 tribunal created in lieu of a county court; the words
104 "commissioner of the county court" and "county commis-
105 sioner" mean, and have reference to, the commissioners,
106 or one of them, composing the county court, in pursu-
107 ance of section twenty-two, article eight of the constitu-

108 tion, as amended, or any existing tribunal created in lieu
109 of a county court;

110 (x) The word "horse" embraces a stallion, a mare and
111 a gelding;

112 (y) The words "railroad" and "railway" shall be
113 construed by the courts of this state to mean the same
114 thing in law; and, in any proceeding wherein a railroad
115 company or a railway company is a party, it shall not
116 be deemed error to call a railroad company a railway
117 company or vice versa; nor shall any demurrer, plea or
118 any other defense be set up to a motion, pleading or
119 indictment in consequence of such misdescription;

120 (z) The sectional headings or headlines of the several
121 sections of this code printed in black-faced type are
122 intended as mere catchwords to indicate the contents of
123 the section and shall not be deemed or taken to be titles
124 of such sections, or as any part of the statute, and, unless
125 expressly so provided, they shall not be so deemed when
126 any of such sections, including the headlines, are
127 amended or reenacted;

128 (aa) The words "infant" and "minor" mean persons
129 under the age of eighteen years as such words are used
130 in this code or in rules and regulations promulgated by
131 the supreme court of appeals;

132 (bb) A statute is presumed to be prospective in its
133 operation unless expressly made retrospective;

134 (cc) Unless there is a provision in a section, article or
135 chapter of this code specifying that the provisions
136 thereof shall not be severable, the provisions of every
137 section, article or chapter of this code, whether enacted
138 before or subsequent to the effective date of this
139 subdivision, shall be severable so that if any provision
140 of any such section, article or chapter is held to be
141 unconstitutional or void, the remaining provisions of
142 such section, article or chapter shall remain valid,
143 unless the court finds the valid provisions are so
144 essentially and inseparably connected with, and so
145 dependent upon, the unconstitutional or void provision
146 that the court cannot presume the Legislature would
147 have enacted the remaining valid provisions without the

148 unconstitutional or void one, or unless the court finds the
149 remaining valid provisions, standing alone, are incom-
150 plete and are incapable of being executed in accordance
151 with the legislative intent: *Provided*, That if any such
152 section, article or chapter of this code has its own
153 severability clause; then such severability clause shall
154 govern and control with respect to such section, article
155 or chapter in lieu of the provisions of this subdivision.
156 The provisions of this subdivision shall be fully appli-
157 cable to all future amendments or additions to this code,
158 with like effect as if the provisions of this subdivision
159 were set forth in extenso in every such amendment or
160 addition and were reenacted as a part thereof, unless
161 such amendment or addition contains its own severabil-
162 ity clause;

163 (dd) A reference to any section, article or chapter of
164 this code applies to all reenactments, revisions or
165 amendments thereof;

166 (ee) If a statute refers to a series of numbers or
167 letters, the first and the last numbers or letters in the
168 series are deemed to be included;

169 (ff) The words "board of regents," wherever they
170 appear in the code, means the board of trustees created
171 by section one, article one, chapter eighteen-b of this
172 code and the board of directors created by section one,
173 article one, chapter eighteen-b of this code unless the
174 term is used in relation to activities conducted solely by
175 an institution or institutions governed by article two,
176 chapter eighteen-b of this code in which case it only
177 means the board of trustees, or where the term is used
178 in relation to activities conducted solely by an institution
179 or institutions governed by article three, chapter
180 eighteen-b of the code in which case it only means the
181 board of directors.

CHAPTER 9A. VETERANS' AFFAIRS.

ARTICLE 1. DEPARTMENT OF VETERANS' AFFAIRS.

§9A-1-11: Advisory council.

1 There is hereby established an advisory council to the
2 West Virginia department of veterans' affairs, which

3 shall meet on the call of the chairman of the veterans'
4 council with the veterans' council at any of its regular
5 or special meetings, in connection with the establish-
6 ment of rules of the department to effectuate the
7 purposes of this article and promote the efficient
8 operation of the department, but the advisory council
9 shall have no vote. The director, in carrying out his
10 powers and duties, shall have the right to call on the
11 individual members of the advisory council, and through
12 them or their department, agency or organization, and
13 also to call on such other departments or agencies of the
14 state, as may be necessary, for advice, aid and assist-
15 ance. The members of the advisory council shall be the
16 state superintendent of free schools, commissioner of
17 agriculture, adjutant general, state banking commis-
18 sioner, state director of health, secretary of education
19 and the arts, commissioner of corrections, commissioner
20 of the department of highways and the commissioner of
21 the department of human services, or their duly
22 authorized and accredited representatives.

**CHAPTER 10. PUBLIC LIBRARIES; PUBLIC RE-
CREATION; ATHLETIC ESTABLISHMENTS; MONU-
MENTS AND MEMORIALS; ROSTER OF
SERVICEMEN; EDUCATIONAL BROADCASTING
AUTHORITY.**

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

**§10-5-2. West Virginia educational broadcasting author-
ity; members; organization; officers; em-
ployees; meetings; expenses.**

1 The West Virginia educational broadcasting author-
2 ity, heretofore created, is hereby continued as a public
3 benefit corporation. It shall consist of eleven voting
4 members, who shall be residents of the state, of whom
5 one shall be the state superintendent of schools, one shall
6 be a member of the West Virginia board of education
7 to be selected by it annually, one shall be a member of
8 the university of West Virginia board of trustees to be
9 selected by it annually, and one shall be a member of
10 the board of directors of the state college system to be
11 selected by it annually. The other seven members shall

12 be appointed by the governor by and with the advice and
13 consent of the Senate for overlapping terms of seven
14 years, one term expiring each year, except that the
15 appointment to fill the membership position for the term
16 expiring in the year one thousand nine hundred eighty-
17 three, shall be for a term of six years. Not less than one
18 appointive member shall come from each congressional
19 district. Employees of noncommercial broadcasting
20 stations in West Virginia are not eligible for appoint-
21 ment to the authority. The present members of the
22 authority shall continue to serve out the terms to which
23 they were appointed. Any vacancy among the appointive
24 members shall be filled by the governor by appointment
25 for the unexpired term.

26 The chairperson and vice chairperson of the authority
27 as of the effective date of this section shall continue in
28 their respective offices until their successors are elected.
29 Thereafter, at its annual meeting in each year the
30 authority shall elect one of its members as chairperson
31 and one as vice chairperson. The authority is authorized
32 to select an executive director and such other personnel
33 as may be necessary to perform its duties and to fix the
34 compensation of such personnel to be paid out of moneys
35 appropriated for this purpose. The executive director
36 shall keep a record of the proceedings of the authority
37 and shall perform such other duties as it may prescribe.
38 The authority is authorized to establish such office or
39 offices as may be necessary for the proper performance
40 of its duties.

41 The authority shall hold an annual meeting and may
42 meet at such other times and places as may be neces-
43 sary, such meetings to be held upon its own resolution
44 or at the call of the chairperson of the authority. The
45 members shall serve without compensation but may be
46 reimbursed for actual expenses incident to the perfor-
47 mance of their duties upon presentation to the chairper-
48 son of an itemized sworn statement thereof.

CHAPTER 18. EDUCATION.

Article.

2. State Board of Education.
- 2B. Area Vocational Program.

- 10H. Albert Yanni Programs of Excellence in Vocational—Technical Education.
- 26A. State Autism Training Center.
- 29. Grievance Procedure.
- 30. West Virginia Higher Education Tuition Trust Act.

ARTICLE 2. STATE BOARD OF EDUCATION.

- §18-2-1. Creation; composition; appointment, qualifications, terms and removal of members; offices.
- §18-2-3. Meetings; compensation and expenses of members.
- §18-2-10. Certificates and awards.

§18-2-1. Creation; composition; appointment, qualifications, terms and removal of members; offices.

1 There shall be a state board of education, to be known
2 as the West Virginia board of education, which shall be
3 a corporation and as such may contract and be con-
4 tracted with, plead and be impleaded, sue and be sued,
5 and have and use a common seal. The state board shall
6 consist of twelve members, of whom one shall be the
7 state superintendent of schools, ex officio; one of whom
8 shall be the chancellor of the board of trustees, ex
9 officio; and one of whom shall be the chancellor of the
10 board of directors, ex officio, none of whom shall be
11 entitled to vote. The other nine members shall be
12 citizens of the state, appointed by the governor, by and
13 with the advice and consent of the Senate, for overlap-
14 ping terms of nine years, except that the original
15 appointments shall be for terms of one, two, three, four,
16 five, six, seven, eight and nine years, respectively.
17 Terms of office shall begin on the fifth day of November
18 of the appropriate year and end on the fourth day of
19 November of the appropriate year. At least two but not
20 more than three members shall be appointed from each
21 congressional district.

22 No more than five of the appointive members shall
23 belong to the same political party, and no person shall
24 be eligible for appointment to membership on the state
25 board who is a member of any political party executive
26 committee or holds any other public office or public
27 employment under the federal government or under the
28 government of this state or any of its political subdivi-

29 sions, or who is an appointee or employee of the board.
30 Members shall be eligible for reappointment. Any
31 vacancy on the board shall be filled by the governor by
32 appointment for the unexpired term.

33 Notwithstanding the provisions of section four, article
34 six, chapter six of this code, no member of the state
35 board may be removed from office by the governor
36 except for official misconduct, incompetence, neglect of
37 duty, or gross immorality and then only in the manner
38 prescribed by law for the removal by the governor of
39 state elective officers.

40 Before exercising any authority or performing any
41 duties as a member of the state board, each member
42 shall qualify as such by taking and subscribing to the
43 oath of office prescribed by section five, article four of
44 the constitution of West Virginia, the certificate whereof
45 shall be filed with the secretary of state. A suitable
46 office in the state department of education at the state
47 capitol shall be provided for the use of the state board.
48

§18-2-3. Meetings; compensation and expenses of members.

1 The state board shall hold at least six meetings in
2 every year at such times and places as it may prescribe.
3 It may meet at such other times as may be necessary,
4 such meetings to be held upon its own resolution or at
5 the call of the president of the state board. The members
6 of the state board, other than the ex officio members of
7 the board, shall be paid one hundred dollars per diem
8 each day or any part thereof spent in the performance
9 of their duties under this article, and shall be reim-
10 bursed for all reasonable and necessary expenses
11 actually incurred incident to the performance of their
12 duties. The state superintendent of schools, the chancel-
13 lor of the board of trustees and the chancellor of the
14 board of directors shall be reimbursed for such ex-
15 penses, but shall not receive a per diem allowance. Upon
16 presentation of itemized sworn statements, the per diem
17 and reimbursement payments shall be made from

- 18 appropriations made by the Legislature to the state board.

§18-2-10. Certificates and awards.

- 1 The state board of education shall make rules and
2 regulations and shall determine the minimum standards
3 for the granting of certificates and awards for secondary
4 vocational education, adult basic education, adult
5 occupational education and adult technical preparatory
6 education, subject to the provisions of section two, article
7 two-b of this chapter and article three-a of chapter
8 eighteen-b of this code.

ARTICLE 2B. AREA VOCATIONAL PROGRAM.

§18-2B-2. State board of vocational education; authority to establish programs, etc., until July 1, 1990; Joint Commission for Vocational-Technical-Occupational Education; state board of education and board of directors; authority to establish programs, etc.; division of vocational education established; rules and regulations; director.

§18-2B-3. Area vocational education program funds.

§18-2B-4. Expenditure of funds.

§18-2B-5. Title to property.

§18-2B-2. State board of vocational education; authority to establish programs, etc., until July 1, 1990; Joint Commission for Vocational-Technical-Occupational Education; state board of education and board of directors; authority to establish programs, etc.; division of vocational education established; rules and regulations; director.

- 1 (a) For the purpose of this article, the state board of
2 education is designated as the state board of vocational
3 education serving and meeting as the sole agency
4 responsible for the administration of vocational educa-
5 tion and for supervision of the administration thereof by
6 local educational agencies and is hereby authorized and
7 empowered to establish, operate and maintain area
8 vocational educational programs including the acquisi-
9 tion by purchase, lease, gift or otherwise of necessary
10 lands and the construction, expansion, remodeling,
11 alteration and equipping of necessary buildings for the
12 purpose of operating and conducting educational
13 training centers. The state board of vocational education

14 may delegate for such period of time as it may deter-
15 mine its operational authority for multi-county voca-
16 tional centers to an administrative council composed of
17 equal representation from each of the participating
18 county boards of education, the superintendent of
19 schools from each participating county, and the state
20 director of vocational education or his representative. To
21 this end, there is hereby expressly established in the
22 state board of education a division of vocational
23 education which shall establish the area or areas in
24 which the programs are to be conducted and shall have
25 authority to promulgate, pursuant to the provisions of
26 chapter twenty-nine-a of this code, rules and regulations
27 necessary to carry out the provisions of this article. The
28 administration and supervision of the area vocational
29 educational programs shall be administered by the
30 director of the division of vocational education.

31 (b) Effective the first day of July, one thousand nine
32 hundred ninety, the West Virginia Joint Commission for
33 Vocational-Technical-Occupational Education, hereinaf-
34 ter referred to as "joint commission," established
35 pursuant to the provisions of article three-a, chapter
36 eighteen-b of this code, is designated as the sole agency
37 responsible for the administration of vocational-techni-
38 cal-occupational education in the state. The joint
39 commission is designated thereafter to receive federal
40 money for vocational-technical-occupational education in
41 the state as of the first day of July, one thousand nine
42 hundred ninety. Effective the first day of July, one
43 thousand nine hundred eighty-nine, the joint commission
44 shall determine which adult occupational education
45 programs and which adult technical preparatory
46 educational programs as defined in section one-b, article
47 three-a, chapter eighteen-b of this code, shall be under
48 the jurisdiction of the state board of education and
49 which said programs shall be under the jurisdiction of
50 the board of directors. Effective the first day of July,
51 one thousand nine hundred eighty-nine, any proposed
52 new program by the state board of education or the
53 board of directors in the areas of adult occupational
54 education or adult technical preparatory education as
55 defined in section one-b, article three-a, chapter

56 eighteen-b of this code shall be filed with the joint
57 commission with notice of intent to plan, which such
58 new program shall require approval by the joint
59 commission prior to institution of such new program.
60 The secondary and post-secondary vocational education
61 programs of the state existing as of the effective date
62 of this article shall remain in place until the first day
63 of July, one thousand nine hundred ninety, during which
64 time the joint commission shall conduct a study of
65 secondary and post-secondary vocational education in
66 the state including definitions of same, and shall make
67 recommendations to the Legislature respecting secondary
68 and post-secondary vocational education in the
69 state, including recommendations as to the definitions of
70 same, on or before the first day of December, one
71 thousand nine hundred ninety. As of the first day of
72 July, one thousand nine hundred ninety, the joint
73 commission is authorized to implement policies to
74 supervise and coordinate the secondary and post-
75 secondary vocational education programs in the state.
76 The joint commission is hereby empowered as of the
77 first day of July, one thousand nine hundred ninety, to
78 determine the standards for the certification and
79 awards of vocational programs in the state or to delegate
80 said authority, based on the joint commission's aforesaid
81 study of the secondary and post-secondary vocational
82 education in the state. The state board of education shall
83 be responsible for the administration of secondary
84 vocational education programs, as determined by the
85 joint commission, and for supervision of the administration
86 thereof by local educational agencies and is hereby
87 authorized and empowered to establish, operate and
88 maintain area vocational educational programs including
89 the acquisition by purchase, lease, gift or otherwise
90 of necessary lands and the construction, expansion,
91 remodeling, alteration and equipping of necessary
92 buildings for the purpose of operating and conducting
93 secondary educational training centers. The state board
94 of education may delegate for such period of time as it
95 may determine its operational authority for multi-
96 county vocational centers to an administrative council
97 composed of equal representation from each of the

98 participating county boards of education, the superin-
99 tendent of schools from each participating county, and
100 the state director of vocational education or his repre-
101 sentative. To this end, there is hereby expressly
102 established in the state board of education a division of
103 secondary vocational education which shall establish the
104 area or areas in which the programs are to be conducted
105 and shall have authority to promulgate, pursuant to the
106 provisions of chapter twenty-nine-a of this code, rules
107 and regulations necessary to carry out the provisions of
108 this article. The administration and supervision of the
109 area vocational educational programs shall be adminis-
110 tered by the director of the division of vocational
111 education. The state board of vocational education,
112 previously established under this article, is abolished
113 effective the first day of July, one thousand nine
114 hundred ninety.

115 The board of directors shall be responsible for the
116 administration of all post-secondary vocational educa-
117 tion in the state, as determined by the joint commission,
118 which shall be administered as a part of the state college
119 system as defined in section two, article one, chapter
120 eighteen-b of this code. In the development of the post-
121 secondary education portion of any and all state plans
122 or amendments thereto as may be required for partic-
123 ipation in the Vocational Education Act of 1963, as
124 amended, or as may be required for state participation
125 in any federally funded post-secondary vocational-
126 technical or occupational education programs, the board
127 of directors shall solicit recommendations from the state
128 board of education and the director of the division of
129 vocational education for the post-secondary education
130 provisions to be included in all such plans.

131 The joint commission shall, in any and all plans
132 submitted for federal vocational education funds in
133 support of vocational-technical or occupational educa-
134 tion, provide that:

135 (a) The secondary vocational-technical-occupational
136 education programs administered by the state board of
137 education shall be eligible to receive vocational-techni-

138 cal-occupational education funds in accordance with
139 federal guidelines;

140 (b) The comprehensive community college education
141 service regions as established by the board of directors
142 shall be eligible to receive post-secondary vocational-
143 technical-occupational funds in accordance with federal
144 guidelines;

145 (c) Services, programs, equipment and facilities may
146 be contracted between comprehensive community
147 colleges, area vocational technical schools and county
148 boards of education as a means of preventing unneces-
149 sary duplication;

150 (d) Federal funds provided to the state in support of
151 vocational-technical-occupational education shall be
152 allocated to the state board of education and to the board
153 of directors for use in the state system of comprehensive
154 vocational-technical-occupational education in an
155 amount in direct proportion as the respective vocational-
156 technical-occupational enrollments of each program is to
157 the total vocational-technical-occupational enrollment of
158 the state.

159 (e) There shall be established an implementation team
160 to review the work of the joint commission for voca-
161 tional-technical-occupational education and to file a
162 report with the governor and the Legislature by the first
163 day of December, one thousand nine hundred ninety,
164 and shall also file a report with the legislative oversight
165 commission on education accountability no later than
166 the first day of December, one thousand nine hundred
167 eighty-nine. The implementation team shall be com-
168 posed of one representative of the state department of
169 education, one representative of the community colleges,
170 three members of the senate education committee and
171 three members of the house education committee, all to
172 be appointed by the governor. The secretary of educa-
173 tion and the arts shall be responsible for staffing the
174 implementation team utilizing existing personnel,
175 equipment and offices of the board of directors of the
176 state college system and the state board of education.

§18-2B-3. Area vocational education program funds.

1 There is hereby established a fund to be known as "the
2 area vocational education program fund for secondary
3 education." There is hereby established a separate fund
4 to be known as "the area vocational education program
5 fund for post-secondary vocational education." All
6 moneys appropriated for such purpose by the Legisla-
7 ture as well as any gifts or grants made to the
8 appropriate fund by any governmental subdivision of
9 the state or by the United States government or by any
10 individual, firm or corporation, to carry out the
11 provisions of this article shall be expended by the state
12 board of education or the board of directors, as the case
13 may be.

§18-2B-4. Expenditure of funds.

1 The state board of education and the board of
2 directors, as the case may be, are authorized and
3 empowered to expend the area vocational education
4 program funds for salaries, teachers' retirement contri-
5 butions, and necessary travelling expenses of teachers,
6 and other necessary employees, including, but not
7 limited to, vocational guidance counselors, for purchase,
8 rental, maintenance and repair of instructional equip-
9 ment, buildings and supplies, and for the necessary costs
10 of transportation of certified students.

§18-2B-5. Title to property.

1 Title to any property, equipment, tools, furniture or
2 instructional materials purchased prior to the effective
3 date of this section out of the fund provided for area
4 vocational education program funds previously estab-
5 lished and existing immediately prior to the effective
6 date of this article shall be transferred to and vested in
7 the West Virginia board of education. After the effective
8 date of this article, purchases from funds established in
9 section four shall be vested in the state board of
10 education or the board of directors as the case may be.

**ARTICLE 10H. ALBERT YANNI PROGRAMS OF EXCELLENCE
IN VOCATIONAL-TECHNICAL EDUCATION.**

§18-10H-1. Purpose; legislative intent.

§18-10H-2. Academy for talented vocational-technical education students.

**§18-10H-3. Scholarship fund for vocational-technical education students and
educators.**

§18-10H-4. Interdisciplinary doctoral program in vocational-technical education.

§18-10H-5. Vocational-technical education administrator's academy.

§18-10H-6. Effective schools program in vocational-technical education.

§18-10H-7. Unified technology transfer program.

§18-10H-1. Purpose; legislative intent.

1 Rapid technological advances, the advent of a global
2 economy, changing demographics and restructuring of
3 the traditional workplace have dictated changes in
4 educational programs designed to prepare work force
5 entrants and incumbents. More emphasis must be
6 placed on the transfer of technology, via the educational
7 system, to the workplace resulting in an academically
8 and technically literate work force. A structure must be
9 established to provide incentives, high expectations and
10 encouragement for talented vocational-technical stu-
11 dents to pursue advanced education and training related
12 to their technical disciplines, as well as provide a
13 mechanism for the technical updating of vocational-
14 technical teachers and administrators, including oppor-
15 tunities for the attainment of advanced degrees.

16 The economic future of the state of West Virginia will
17 be greatly influenced by the ability of the educational
18 system to prepare competent individuals for a highly
19 competitive and technological workplace. Excellence in
20 terms of faculty, programs and educational opportuni-
21 ties for all West Virginians will greatly affect the
22 degree of future economic prosperity within the state.
23 With the enactment of this article, the Legislature
24 intends to address a major void in the current system
25 of vocational-technical education in West Virginia
26 through the creation of a comprehensive program of
27 educational incentives for talented students, teachers
28 and administrators. The results of the programs and
29 initiatives proposed by this article can have a significant
30 impact toward achieving excellence in vocational-
31 technical education within West Virginia and revitaliz-
32 ing the state's economy.

§18-10H-2. Academy for talented vocational-technical education students.

1 The West Virginia board of education shall establish

2 by the first day of July, one thousand nine hundred
3 ninety, an annual academy for talented vocational-
4 technical education students, including a foundation for
5 receiving private financial support. The purposes of the
6 academy are to stimulate and reward student commit-
7 ment to excellence in secondary vocational-technical
8 education; to stimulate growth in the critical and
9 creative thinking abilities of vocational-technical
10 students; to assist exceptionally talented secondary
11 vocational-technical education students to achieve their
12 individual potentials; to bridge the gap between
13 educational practice and the technological workplace;
14 and to provide a medium for interaction between
15 talented vocational-technical students and innovative
16 leaders of business and industry and labor.

17 The state board of education may establish a coordi-
18 nating committee to set operating guidelines for the
19 academy and supporting foundation, including, but not
20 limited to, selection of participants, promotion, program
21 development, location, facilities and staffing.

22 The nonprofit academy foundation shall exist to solicit
23 private funds and resources to enhance the operation of
24 the academy.

**§18-10H-3. Scholarship fund for vocational-technical
education students and educators.**

1 Beginning with the school year one thousand nine
2 hundred eighty-nine—ninety, the state board of educa-
3 tion shall establish a scholarship program for outstand-
4 ing secondary vocational-technical education graduates
5 to pursue additional post-secondary college work in a
6 related career or technical field. The board may award
7 twenty annual scholarships, not to exceed two thousand
8 dollars each, based on criteria to be established by the
9 board. Additionally, the board may award fifteen
10 annual scholarships, not to exceed one thousand dollars
11 each, to outstanding vocational-technical teachers for
12 the purpose of pursuing advanced degrees or technical
13 updating of their professional competencies. The criteria
14 for awarding the educator scholarships shall be promul-
15 gated by the board. The foundation provided for in

16 section two of this article shall solicit private sector
17 funds for these scholarships.

§18-10H-4. Interdisciplinary doctoral program in vocational-technical education.

1 The West Virginia board of regents shall establish by
2 the first day of July, one thousand nine hundred ninety-
3 one, a plan for a coordinate interdisciplinary doctoral
4 program in vo-tech education utilizing existing facilities
5 and personnel of state universities, colleges, the state
6 department of education vocational-technical staff and
7 board of regents members.

§18-10H-5. Vocational-technical education administrator's academy.

1 The West Virginia board of education shall maintain
2 and expand an annual vocational-technical education
3 administrator's academy. The purposes of this academy
4 are to stimulate excellence in vocational-technical
5 education programming statewide through the develop-
6 ment of progressive instructional leadership, planning
7 and program development competencies of vocational-
8 technical education administrators.

9 The board may establish a coordinating committee
10 made up of the department of education staff, local
11 vocational administrators and representatives of the
12 vocational-technical education department at Marshall
13 University to plan and administer this program. The
14 nonprofit academy foundation established in section two
15 of this article shall exist to solicit private funds and
16 resources to enhance the operation of the academy.

§18-10H-6. Effective schools program in vocational-technical education.

1 The state board of education shall establish and
2 operate an effective schools program for vocational-
3 technical education. The purpose of the program is to
4 provide vocational-technical education personnel with
5 resources and staff development for school program
6 improvement based on application of the effective
7 schools research, including components such as instruc-
8 tional leadership, school climate, high student expecta-

9 tions, emphasis on academic and occupational achieve-
10 ment, and community and parental involvement. The
11 program shall be coordinated by the bureau of voca-
12 tional, technical and adult education with the advise-
13 ment from a committee composed of two vocational
14 administrators, two vocational teachers, one vocational
15 guidance counselor, one educator of vocational teachers,
16 one county school superintendent, one comprehensive
17 high school principal, one academic teacher, two
18 business/industry representatives, one labor representa-
19 tive, and one vocational education program completer.

§18-10H-7. Unified technology transfer program.

1 The state board of education shall establish a unified
2 technology transfer program for vocational-technical
3 educators, beginning the first day of July, one thousand
4 nine hundred ninety. This program shall emphasize
5 initiatives designed to improve the transfer of technol-
6 ogy through the vocational-technical education curricu-
7 lum. Such initiatives must impact on improved staff
8 development, curricula and instructional methods
9 reflecting work applications of the new and emerging
10 technologies. The vocational-technical education system
11 must be a catalyst in bridging the gap between high
12 technology and the workplace. Workers for the twenty-
13 first century must know how to install, operate and
14 maintain high technology equipment, systems and
15 processes.

16 The unified technology transfer program shall provide
17 innovative staff development opportunities through the
18 following initiatives:

19 (a) A technical update program for vocational-
20 technical education teachers to learn high technology
21 skills needed to teach the operation, maintenance, or
22 repair of high technology equipment, through placement
23 in industry, formal technical coursework, seminars,
24 teleconferences and other staff development functions;

25 (b) A "Teachers-Teach-Teachers" program to allow
26 the most effective teachers in the state to instruct fellow
27 teachers on how to effectively teach and incorporate
28 high technology skills in the classroom and laboratory;

29 (c) An "Academy Chair" program to allow education
30 or business-industry persons to serve as a resident
31 expert in the transfer of technology, including conduct-
32 ing seminars in educational institutions, teleconferences
33 and in the workplace;

34 (d) A business and education exchange program to
35 allow vocational-technical education teachers to work in
36 a company or business, while the business person
37 teaches in the vocational-technical education program;

38 (e) A beginning teacher internship program to allow
39 new vocational-technical teachers to receive guidance
40 from a mentor teacher in teaching high technology
41 skills, including acquisition of such skills; and

42 (f) A vocational-technical completer capstone expe-
43 rience program that allows talented students an
44 opportunity to learn high technology skills appropriate
45 for their occupational area of study through internship
46 placement in an appropriate business or industry
47 setting.

48 The state board of education may formulate policies
49 and procedures designed to implement this section.

50 The foundation provided for in section two of this
51 article shall solicit private sector funds and encourage
52 partnerships to implement this program.

ARTICLE 26A. STATE AUTISM TRAINING CENTER.

§18-26A-1. Purpose.

§18-26A-2. Definitions.

§18-26A-3. Powers and duties of board of trustees and state autism center.

§18-26A-6. Advisory board.

§18-26A-1. Purpose.

1 The purpose of the Legislature in the enactment of
2 this article is to establish and develop an autism
3 training center in the state of West Virginia with a
4 highly skilled, interdisciplinary, appropriately expe-
5 rienced staff which will train teachers, parents,
6 guardians and others important to the autistic person's
7 education and training. The center shall be established
8 and operated by the West Virginia board of trustees or
9 its designees.

§18-26A-2. Definitions.

- 1 For the purposes of this article:
- 2 "Board" means the West Virginia board of trustees;
- 3 "Center" means the autism training center;
- 4 "Client" means a person with the primary diagnosis
- 5 of autism or autistic-like behavior; and
- 6 "Expenses" means those reasonable and customary
- 7 expenditures related to training and treatment of
- 8 eligible clients as defined in the rules and regulations
- 9 promulgated by the center.

§18-26A-3. Powers and duties of board of trustees and state autism center.

- 1 The board of trustees is authorized to operate a state
- 2 autism training center, including either the acquisition
- 3 by purchase, lease, gift or otherwise, of necessary lands,
- 4 and the construction of necessary buildings; the expansion,
- 5 remodeling, altering or equipping of necessary
- 6 buildings; and the making of contracts by the board of
- 7 trustees with any state, county or municipal agency, or
- 8 nonprofit institution, providing for the equipment,
- 9 expenses, compensation of personnel, operation and
- 10 maintenance of any facility of such agency or institution
- 11 utilized for the purposes of this article. The board or its
- 12 designees may make and enter into all contracts and
- 13 agreements necessary and incidental to the performance
- 14 of its powers and duties under this section, and may
- 15 cooperate with other agencies of the state, county and
- 16 federal governments.

§18-26A-6. Advisory board.

- 1 The board of trustees shall appoint a board of West
- 2 Virginia citizens to advise the center director on matters
- 3 of policy. The advisory board shall be composed of fifty
- 4 percent parents or guardians of clients eligible for the
- 5 center's program; forty percent persons from professional
- 6 fields related to autism, such as special education,
- 7 psychology, hearing and speech, neurology and pedi-

8 atrics; and ten percent knowledgeable lay citizens such
9 as legislators or other lay community leaders. The
10 director of the center shall be an ex officio nonvoting
11 member of the advisory board.

ARTICLE 29. GRIEVANCE PROCEDURE.

§18-29-5. Education employees grievance board; hearing examiners.

1 (a) There is hereby created and shall be an education
2 employees grievance board which shall consist of three
3 members who shall be citizens of the state appointed by
4 the governor by and with the advice and consent of the
5 Senate for overlapping terms of three years, except that
6 the original appointments shall be for a period of one,
7 two and three years, respectively, commencing on the
8 first day of July, one thousand nine hundred eighty-five.
9 No two members shall be from the same congressional
10 district, and no more than two of the appointed
11 members shall be from the same political party. No
12 person shall be appointed to membership on the board
13 who is a member of any political party executive
14 committee or holds any other public office or public
15 employment under the federal government or under the
16 government of this state. Members shall be eligible for
17 reappointment, and any vacancy on the board shall be
18 filled within thirty days of the vacancy by the governor
19 by appointment for the unexpired term.

20 A member of the board may not be removed from
21 office except for official misconduct, incompetence,
22 neglect of duty, gross immorality or malfeasance, and
23 then only in the manner prescribed in article six,
24 chapter six of this code for the removal by the governor
25 of the state elected officers.

26 The board shall hold at least two meetings yearly at
27 such times and places as it may prescribe and may meet
28 at such other times as may be necessary, such meetings
29 to be agreed to in writing by at least two of the
30 members. Members of the board shall each be paid
31 seventy-five dollars for each calendar day devoted to the
32 work of the board, but not more than seven hundred and
33 fifty dollars during any one fiscal year. Each member

34 shall be reimbursed for all reasonable and necessary
35 expenses actually incurred in the performance of board
36 duties, but shall submit a request therefor upon sworn
37 itemized statement.

38 The board is hereby authorized and required to
39 administer the grievance procedure at level four as
40 provided for in section four of this article and shall
41 employ at least two full-time hearing examiners on an
42 annual basis and such clerical help as is necessary to
43 implement the legislative intent expressed in section one
44 of this article.

45 The board shall hire hearing examiners who reside in
46 different regional educational service agency areas
47 unless and until the number of hearing examiners
48 exceeds the number of such areas, at which time two
49 hearing examiners may be from the same such area. If
50 a grievant previously before a hearing examiner again
51 brings a grievance, a different hearing examiner shall
52 be required to hear the grievance upon written request
53 therefor by any party to the grievance. These hearing
54 examiners shall serve at the will and pleasure of the
55 board.

56 The board shall submit a yearly budget and shall
57 report annually to the governor and Legislature regard-
58 ing receipts and expenditures, number of level four
59 hearings conducted, synopses of hearing outcomes and
60 such other information as the board may deem approp-
61 riate. The board shall further evaluate on an annual
62 basis the level four grievance process and the perfor-
63 mance of all hearing examiners and include such
64 evaluation in the annual report to the governor and
65 Legislature. In making such evaluation, the board shall
66 notify all institutions, employee organizations and all
67 grievants participating in level four grievances in the
68 year for which evaluation is being made and shall
69 provide for the submission of written comment and/or
70 the hearing of testimony regarding the grievance
71 process. The board shall provide suitable office space for
72 all hearing examiners in space other than that utilized
73 by any institution as defined in section two of this article

74 and shall ensure that reference materials are generally
75 available.

76 The board is authorized to promulgate rules and
77 regulations consistent with the provisions of this article,
78 such rules and regulations to be adopted in accordance
79 with chapter twenty-nine-a of this code.

80 (b) Hearing examiners are hereby authorized and
81 shall have the power to consolidate grievances, allocate
82 costs among the parties in accordance with section eight
83 of this article, subpoena witnesses and documents in
84 accordance with the provisions of section one, article
85 five, chapter twenty-nine-a of this code, provide such
86 relief as is deemed fair and equitable in accordance with
87 the provisions of this article, and such other powers as
88 will provide for the effective resolution of grievances not
89 inconsistent with any rules or regulations of the board
90 or the provisions of this article.

**ARTICLE 30. WEST VIRGINIA HIGHER EDUCATION TUITION
TRUST ACT.**

§18-30-5. Appointment of board of directors; terms; compensation;
proceedings generally.

§18-30-13. Conditions precedent to administration of trust; disclaimer;
enforcement.

**§18-30-5. Appointment of board of directors; terms;
compensation; proceedings generally.**

1 (a) The board of directors shall consist of the secre-
2 tary of education and the arts, who shall be the
3 chairman of the board, the state treasurer, and the state
4 superintendent of schools, who shall serve as ex officio
5 voting members of the board, and six other members
6 with knowledge, skill and experience in an academic,
7 business or financial field, who shall be residents of the
8 state appointed by the governor, by and with the advice
9 and consent of the Senate. Of the six appointed
10 members, four shall be appointed from nominations as
11 follows: One shall be a private citizen not employed by
12 or an officer of the state or any political subdivision
13 thereof appointed from one or more nominees of the

14 Speaker of the House of Delegates; one shall be a private
15 citizen not employed by or an officer of the state or
16 any political subdivision thereof appointed from one or
17 more nominees of the President of the Senate; one shall
18 be a president of a state institution of higher education
19 who shall be appointed from one or more nominees of
20 the council of presidents of state colleges and universi-
21 ties; and one shall represent the interests of private
22 institutions of higher education located in this state who
23 shall be appointed from one or more nominees of the
24 West Virginia association of private colleges. Of these
25 six members first appointed, two shall be appointed
26 for terms that expire on the thirty-first day of De-
27 cember, one thousand nine hundred eighty-nine, two
28 shall be appointed for terms that expire on the thirty-
29 first day of December, one thousand nine hundred
30 ninety, and two shall be appointed for a term that
31 expires on the thirty-first day of December, one
32 thousand nine hundred ninety-one. Following the
33 expiration of these fixed terms, a member shall be
34 appointed for a term of three years. A member shall
35 serve until a successor is appointed, and a vacancy shall
36 be filled for the balance of the unexpired term in the
37 same manner as the original appointment. The chan-
38 cellor, treasurer, state superintendent or president of a
39 state institution of higher education may appoint a
40 designee to serve as a voting member of the board in
41 such person's absence.

42 (b) Members of the board shall serve without compen-
43 sation, but shall receive reimbursement for reasonable
44 and necessary expenses actually incurred in the perfor-
45 mance of their duties as board members unless such
46 member is otherwise reimbursed as an employee of the
47 state.

48 (c) A majority of the voting members appointed to the
49 board shall constitute a quorum for the transaction of
50 business at a meeting of the board, or the exercise of
51 a power or function of the trust, notwithstanding the
52 existence of one or more vacancies. Voting upon action
53 taken by the board shall be conducted by majority vote
54 of the members present in person at a meeting of the

55 board, and, if authorized by the bylaws of the board and
56 when a quorum is present in person at the meeting, by
57 use of amplified telephonic equipment. The board shall
58 meet at the call of the chairman and as may be provided
59 in its bylaws. Meetings of the board may be held
60 anywhere within the state.

61 (d) The board is subject to the open governmental
62 proceedings and freedom of information provisions of
63 article nine-a, chapter six, and chapter twenty-nine-b,
64 respectively, of this code.

**§18-30-13. Conditions precedent to administration of
trust; disclaimer; enforcement.**

1 (a) Before the trust can enter into a tuition prepay-
2 ment contract or tuition trust account contract with
3 purchasers, it shall provide the Legislature with a
4 report outlining any ruling or opinion rendered by the
5 Internal Revenue Service regarding the federal tax
6 consequences of any benefits or refunds received from
7 the trust under the applicable contract. This ruling or
8 opinion rendered by the Internal Revenue Service may
9 be a ruling or opinion sought by the trust or a ruling
10 or opinion that relates to similar contracts in another
11 state.

12 (b) Before entering into a tuition prepayment contract
13 or tuition trust account contract with purchasers, the
14 state shall solicit answers to appropriate ruling requests
15 from the federal Securities and Exchange Commission
16 regarding the application of federal security laws to the
17 trust. No contracts may be entered without the trust
18 making known to the Legislature the status of the
19 request.

20 (c) Nothing in this article or in a contract entered into
21 pursuant to this article may be construed as a promise
22 or guarantee by the trust or the state that a person will
23 be admitted to a particular institution of higher
24 education, will be allowed to continue to attend an
25 institution of higher education after having been
26 admitted or will be graduated from an institution of
27 higher education.

- 28 (d) The board, state institutions of higher education,
29 purchasers and qualified beneficiaries may enforce this
30 article and any contract entered into pursuant to this
31 article in the circuit court of Kanawha County.

CHAPTER 18B. HIGHER EDUCATION.

Article

1. Governance.
2. University of West Virginia Board of Trustees.
3. Board of Directors of the State College System.
- 3A. West Virginia Joint Commission for Vocational-Technical-Occupational Education.
4. General Administration.
5. Higher Education Budgets and Expenditures.
6. Other Boards and Advisory Councils.
7. Personnel Generally.
8. Higher Education Full-Time Faculty Salaries.
9. Classified Employee Salary Schedule and Classification System.
10. Fees and Other Money Collected at State Institutions of Higher Education.
11. Miscellaneous Institutes and Centers.
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13. Higher Education-Industry Partnerships.
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ARTICLE 1. GOVERNANCE.

- §18B-1-1. Legislative purpose; creation of governing boards.
§18B-1-2. Definitions.
§18B-1-3. Transfer of powers, duties, property, obligations, etc., of prior governing boards to the board of trustees and board of directors.
§18B-1-4. Prior transfer of powers, etc., to board of regents; board of regents abolished.
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§18B-1-7. Supervision by governing boards; delegation to president.
§18B-1-8. Powers and duties of governing boards generally.
§18B-1-9. Powers and duties of institutional presidents.
§18B-1-10. Task force on faculty salaries and resource allocation.

§18B-1-1. Legislative purpose; creation of governing boards.

- 1 The purpose of the Legislature in the enactment of
- 2 this article is to establish a governance structure for the
- 3 state institutions of higher education consisting of a
- 4 board to govern the University of West Virginia system,

5 designated the "University of West Virginia Board of
6 Trustees," and a board to govern the state college
7 system, designated the "Board of Directors of The State
8 College System."

9 In furtherance of this purpose, there are hereby
10 created two governing boards to be known as the
11 university of West Virginia board of trustees, and the
12 board of directors of the state college system, which
13 shall be corporations and as such may contract and be
14 contracted with, plead and be impleaded, sue and be
15 sued, and have and use common seals.

§18B-1-2. Definitions.

1 The following words when used in this chapter and
2 chapter eighteen-c of this code shall have the meaning
3 hereafter ascribed to them unless the context clearly
4 indicates a different meaning:

5 (a) "Governing board" or "board" means the univer-
6 sity of West Virginia board of trustees or the board of
7 directors of the state college system, whichever is
8 applicable within the context of the institution or
9 institutions referred to in this chapter or in other
10 provisions of law;

11 (b) "Governing boards" or "boards" means both the
12 board of trustees and the board of directors;

13 (c) "Community colleges" means Southern West
14 Virginia Community College, West Virginia Northern
15 Community College, and any institution of higher
16 education which has been designated as a community
17 college by the board of directors under the provisions
18 of section four, article three of this chapter;

19 (d) "Directors" or "board of directors" mean the board
20 of directors of the state college system created pursuant
21 to article three of this chapter or the members thereof;

22 (e) "Higher educational institution" means any insti-
23 tution as defined by sections 401(f), (g), (h) of the federal
24 higher education facilities act of 1963, as amended;

25 (f) "Post-secondary vocational education programs"
26 means any college-level course or program beyond the

27 high school level provided through an institution of
28 higher education which results in or may result in the
29 awarding of a two-year associate degree, under the
30 jurisdiction of the board of directors;

31 (g) "Rule" or "rules" mean a regulation, standard,
32 policy or interpretation of general application and
33 future effect;

34 (h) "Senior administrator" means the person hired by
35 the governing boards in accordance with section one,
36 article four of this chapter, with such powers and duties
37 as may be provided for in section two of said article four;

38 (i) "State college" means Bluefield State College,
39 Concord College, Fairmont State College, Glenville
40 State College, Shepherd College, West Liberty State
41 College, West Virginia Institute of Technology, or West
42 Virginia State College;

43 (j) "State college system" means the state colleges and
44 community colleges, and also shall include post-second-
45 ary vocational education programs in the state, as those
46 terms are defined in this section;

47 (k) "State institution of higher education" means any
48 university, college or community college in the state
49 university system or the state college system as those
50 terms are defined in this section;

51 (l) "Trustees" and "board of trustees" mean the
52 university of West Virginia board of trustees created
53 pursuant to article two of this chapter or the members
54 thereof;

55 (m) "University of West Virginia" and "state univer-
56 sity system" means the multi-campus, integrated
57 university of the state, consisting of West Virginia
58 University including West Virginia University at
59 Parkersburg, Potomac State College of West Virginia
60 University and the West Virginia University School of
61 Medicine; Marshall University including the Marshall
62 University School of Medicine; the University of West
63 Virginia College of Graduate Studies; and the West
64 Virginia School of Osteopathic Medicine; and

65 (n) "University" means the multi-campus, integrated
66 university of the state, consisting of West Virginia
67 University including West Virginia University at
68 Parkersburg, Potomac State College of West Virginia
69 University and the West Virginia University School of
70 Medicine; Marshall University including the Marshall
71 University School of Medicine; the University of West
72 Virginia College of Graduate Studies; or the West
73 Virginia School of Osteopathic Medicine.

§18B-1-3. Transfer of powers, duties, property, obligations, etc., of prior governing boards to the board of trustees and board of directors.

1 (a) All powers, duties and authorities transferred to
2 the board of regents pursuant to former provisions of
3 chapter eighteen of this code are hereby transferred to
4 the governing boards created in this chapter and shall
5 be exercised and performed by the governing boards as
6 such powers, duties and authorities may apply to each
7 governing board and to institutions under its
8 jurisdiction.

9 (b) Title to all property previously transferred to or
10 vested in the board of regents formerly existing under
11 the provisions of chapter eighteen of this code are
12 hereby transferred to such governing board as those
13 titles may apply to property which is appropriately
14 under the jurisdiction of that governing board. Property
15 transferred to or vested in the board of regents shall
16 include (1) all property vested in the board of governors
17 of West Virginia University and transferred to and
18 vested in the West Virginia board of regents; (2) all
19 property acquired in the name of the state board of
20 control or the West Virginia board of education and
21 used by or for the state colleges and universities and
22 transferred to and vested in the West Virginia board of
23 regents; and (3) all property acquired in the name of the
24 state commission on higher education and transferred to
25 and vested in the West Virginia board of regents.

26 (c) Each valid agreement and obligation previously
27 transferred to or vested in the board of regents formerly
28 existing under the provisions of chapter eighteen of this

29 code is hereby transferred to the governing boards as
30 those agreements and obligations may apply to each
31 governing board and to institutions under its jurisdic-
32 tion. Valid agreements and obligations transferred to
33 the board of regents shall include (1) each valid
34 agreement and obligation of the board of governors of
35 West Virginia University transferred to and deemed the
36 agreement and obligation of the West Virginia board of
37 regents; (2) each valid agreement and obligation of the
38 state board of education with respect to the state
39 colleges and universities transferred to and deemed the
40 agreement and obligation of the West Virginia board of
41 regents; and (3) each valid agreement and obligation of
42 the state commission on higher education transferred to
43 and deemed the agreement and obligation of the West
44 Virginia board of regents.

45 (d) All orders, resolutions and rules adopted or
46 promulgated by the board of regents and in effect
47 immediately prior to the first day of July, one thousand
48 nine hundred eighty-nine, are hereby transferred to the
49 governing boards as those orders, resolutions and rules
50 may apply to each governing board and to institutions
51 under its jurisdiction and shall continue in effect and
52 shall be deemed the orders, resolutions and rules of the
53 respecting governing boards until rescinded, revised,
54 altered or amended by the appropriate governing board
55 in the manner and to the extent authorized and
56 permitted by law. Such orders, resolutions and rules
57 shall include (1) those adopted or promulgated by the
58 board of governors of West Virginia University and in
59 effect immediately prior to the first day of July, one
60 thousand nine hundred sixty-nine, unless and until
61 rescinded, revised, altered or amended by the board of
62 regents in the manner and to the extent authorized and
63 permitted by law; (2) those respecting state colleges and
64 universities adopted or promulgated by the West
65 Virginia board of education and in effect immediately
66 prior to the first day of July, one thousand nine hundred
67 sixty-nine, unless and until rescinded, revised, altered or
68 amended by the board of regents in the manner and to
69 the extent authorized and permitted by law; and (3)
70 those adopted or promulgated by the state commission

71 on higher education and in effect immediately prior to
72 the first day of July, one thousand nine hundred sixty-
73 nine, unless and until rescinded, revised, altered or
74 amended by the board of regents in the manner and to
75 the extent authorized and permitted by law.

76 (e) As to any title, agreement, obligation, order,
77 resolution, rule or any other matter about which there
78 is some uncertainty, misunderstanding or question
79 regarding the applicability to one or both of the
80 governing boards, the matter shall be summarized in
81 writing and sent to the secretary of education and the
82 arts, who shall make a determination regarding such
83 matter within thirty days of receipt thereof.

84 (f) Rules or provisions of law which refer to other
85 provisions of law which were repealed, rendered
86 inoperative, or superseded by the provisions of this
87 section shall remain in full force and effect to such
88 extent as may still be applicable to higher education and
89 may be so interpreted. Such references include, but are
90 not limited to, references to sections and prior enact-
91 ments of article twenty-six, chapter eighteen of this code
92 and code provisions relating to retirement, health
93 insurance, grievance procedures, purchasing, student
94 loans and savings plans. Any determination which needs
95 to be made regarding applicability of any provision of
96 law shall first be made by the secretary of education and
97 the arts.

**§18B-1-4. Prior transfer of powers, etc., to board of
regents; board of regents abolished.**

1 (a) All the powers, duties and authorities which the
2 board of governors of West Virginia University,
3 previously established by article eleven of chapter
4 eighteen of the code or by any other provisions of law,
5 may have had immediately prior to the first day of July,
6 one thousand nine hundred sixty-nine, shall be the
7 powers, duties and authorities of the West Virginia
8 board of regents until the first day of July, one thousand
9 nine hundred eighty-nine. Until such date, all of the
10 policies and affairs of West Virginia University shall be
11 determined, controlled, supervised and managed by the

12 West Virginia board of regents, who shall exercise and
13 perform all such powers, duties and authorities.

14 All powers, duties and authorities which the West
15 Virginia board of education may have had with respect
16 to state colleges and universities immediately prior to
17 the first day of July, one thousand nine hundred sixty-
18 nine, shall be the powers, duties and authorities of the
19 West Virginia board of regents until the first day of
20 July, one thousand nine hundred eighty-nine. Until such
21 date, all of the policies and affairs of the state colleges
22 and universities shall be determined, controlled, super-
23 vised and managed by the West Virginia board of
24 regents, who shall exercise and perform all such powers,
25 duties and authorities: *Provided*, That the standards for
26 education of teachers and teacher preparation programs
27 at the state colleges and universities shall continue to be
28 under the general direction and control of the West
29 Virginia board of education, and the West Virginia
30 board of education shall have sole authority to continue,
31 as authorized by section six, article two, chapter
32 eighteen of this code, to enter into agreements with
33 county boards of education for the use of the public
34 schools to give prospective teachers teaching experience.

35 All powers, duties and authorities vested in the state
36 commission on higher education by previous provisions
37 of chapter eighteen of this code or by any other
38 provisions of law shall be the powers, duties and
39 authorities of the West Virginia board of regents until
40 the first day of July, one thousand nine hundred eighty-
41 nine. Until such date, all of the powers, duties, and
42 authorities of the state commission on higher education
43 shall be exercised and performed by the West Virginia
44 board of regents.

45 (b) The board of regents shall be abolished on the first
46 day of July, one thousand nine hundred eighty-nine.

**§18B-1-5. Board of trustees and board of directors under
department of education and the arts.**

1 (a) The university of West Virginia board of trustees
2 and the board of directors of the state college system,
3 created in articles two and three of this chapter, are

4 under the jurisdiction of the department of education
5 and the arts created in article one, chapter five-f of this
6 code, and are subject to the supervision of the secretary
7 of education and the arts. Rules adopted by the
8 governing boards shall be subject to approval by the
9 secretary of education and the arts. The budget submit-
10 ted by each board pursuant to the provisions of section
11 eight of this article shall be subject to approval of the
12 secretary of the department of education and the arts,
13 all pursuant to the provisions of article two, chapter
14 five-f of this code.

15 (b) The secretary of education and the arts is respon-
16 sible for the coordination of policies and purposes of the
17 state university system and the state college system and
18 shall provide for and facilitate sufficient interaction
19 between the governing boards, and between the govern-
20 ing boards and the state board of education, to assure
21 appropriate mission and program coordination and
22 cooperation among (1) the state university system, (2)
23 the state college system, exclusive of the community
24 colleges, (3) the community colleges and community
25 college components of four-year institutions, if any, and
26 (4) the vocational-technical centers in the state, recog-
27 nizing the inherent differences in the missions and
28 capabilities of these four categories of institutions.

29 (c) The secretary of education and the arts shall
30 conduct a special study of the West Virginia University
31 at Parkersburg, Potomac State College of West Virginia
32 University and the University of West Virginia College
33 of Graduate Studies to determine the role and mission
34 of said institutions in the reorganized system of higher
35 education in the state and shall submit a report on the
36 study to the Legislature on or before the first day of
37 January, one thousand nine hundred ninety.

§18B-1-6. Rule making.

1 The university of West Virginia board of trustees and
2 the board of directors of the state college system are
3 hereby empowered to promulgate, adopt, amend or
4 repeal rules, subject to the approval of the secretary of
5 education and the arts, in accordance with the provi-

6 sions of article three-a, chapter twenty-nine-a of this
7 code, as they may deem necessary and convenient to
8 ensure the full implementation of their powers and
9 duties. Each governing board shall file a copy of any
10 rule it proposes to promulgate, adopt, amend or repeal
11 under the authority of this article with the legislative
12 oversight commission on education accountability
13 created in said article three-a, chapter twenty-nine-a of
14 this code.

15 Nothing in this section shall be construed to apply to
16 any rule promulgated or adopted by a state institution
17 of higher education.

§18B-1-7. Supervision by governing boards; delegation to president.

1 On and after the first day of July, one thousand nine
2 hundred eighty-nine, the governing boards shall deter-
3 mine, control, supervise and manage all of the policies
4 and affairs of the state institutions of higher education
5 under their jurisdiction and shall exercise and perform
6 all such powers, duties and authorities respecting those
7 institutions as were previously exercised and performed
8 by the West Virginia board of regents.

9 The governing boards have the general determination,
10 control, supervision and management of the financial,
11 business, and educational policies and affairs of all state
12 institutions of higher education under their jurisdiction.
13 The board of trustees and the board of directors shall
14 seek the approval of the West Virginia Legislature
15 before either governing board takes action that would
16 result in the creation or closing of a state institution of
17 higher education.

18 Except as otherwise provided by law, each board's
19 responsibilities shall include, but shall not be limited to,
20 the making of studies and recommendations respecting
21 higher education in West Virginia; allocating among the
22 state institutions of higher education under their
23 jurisdiction specific functions and responsibilities;
24 submitting budget requests for such institutions; and
25 equitably allocating available state appropriated funds
26 among such institutions.

27 Each board shall delegate, as far as is lawful, efficient
28 and fiscally responsible and within prescribed standards
29 and limitations, such part of its power and control over
30 financial, educational and administrative affairs of each
31 state institution of higher education to the president or
32 other administrative head of those institutions. This
33 shall not be interpreted to include the classification of
34 employees, lawful appeals made by students in accordance
35 with board policy, lawful appeals made by faculty
36 or staff, or final review of new or established academic
37 or other programs.

38 To promote the missions and achieve the goals and
39 objectives of the institutions and systems under their
40 jurisdiction and to provide information and guidance for
41 the allocation of funding among institutions in the
42 separate systems in an equitable manner in relation to
43 their missions, goals and objectives, the board of trustees
44 and the board of directors shall each develop comparison
45 information including such factors as peer institution
46 information, enrollment information, data on institutional
47 program scope and diversity, and measures of
48 institutional quality and performance, and shall annually
49 present such information to the secretary of
50 education and the arts and the Legislature along with
51 the resulting allocation decisions made by the respective
52 governing boards. This system shall be implemented by
53 the first day of July, one thousand nine hundred ninety-
54 one. Until the new system is implemented, the current
55 resource allocation model, updated for enrollment and
56 in accordance with other provisions of this code, shall
57 be in effect.

§18B-1-8. Powers and duties of governing boards generally.

1 (a) Each governing board shall separately have the
2 power and duty to:

3 (1) Determine, control, supervise and manage the
4 financial, business and educational policies and affairs
5 of the state institutions of higher education under its
6 jurisdiction;

7 (2) Prepare a master plan for the state institutions of

8 higher education under its jurisdiction, setting forth the
9 goals, missions, degree offerings, resource requirements,
10 physical plant needs, state personnel needs, enrollment
11 levels and other planning determinates and projections
12 necessary in such a plan: *Provided*, That the master plan
13 for post-secondary vocational education is subject to
14 approval by the joint commission for post-secondary
15 occupational education. The plan shall also address the
16 roles and missions of private post-secondary education
17 providers in the state. Each board shall involve the
18 executive and legislative branches of state government
19 and the general public in the development of all
20 segments of the plan for post-secondary education in the
21 state. The plan shall be established for periods of not less
22 than five nor more than ten years and shall be period-
23 ically revised as necessary, including the addition or
24 deletion of degree programs as in the discretion of the
25 boards may be necessary. Whenever a state institution
26 of higher education desires to establish a new degree
27 program, such program proposal shall not be imple-
28 mented until the same is filed with both governing
29 boards. Upon objection thereto within sixty days by
30 either governing board, such program proposal shall be
31 filed with the secretary of education and the arts, who
32 shall approve or disapprove such proposal within one
33 year of the filing of said program proposal;

34 (3) Prescribe and allocate among the state institutions
35 of higher education under its jurisdiction, in accordance
36 with its master plan, specific functions and responsibil-
37 ities to meet the higher education needs of the state and
38 to avoid unnecessary duplication;

39 (4) Consult with the executive branch and the Legis-
40 lature in the establishment of funding parameters,
41 priorities and goals;

42 (5) Establish guidelines for and direct the preparation
43 of budget requests for each of the state institutions of
44 higher education under its jurisdiction, such requests to
45 relate directly to missions, goals and projections in its
46 state master plan;

47 (6) Consider, revise and submit to the appropriate

48 agencies of the executive and legislative branches of
49 state government separate budget requests on behalf of
50 the state institutions of higher education under its
51 jurisdiction or a single budget for the state institutions
52 of higher education under its jurisdiction: *Provided*,
53 That when a single budget is submitted, that budget
54 shall be accompanied by a tentative schedule of pro-
55 posed allocations of funds to the separate state institu-
56 tions of higher education under its jurisdiction;

57 (7) Prepare and submit to the Speaker of the House
58 of Delegates and the President of the Senate, no later
59 than the first day of each regular session of the
60 Legislature, and to any member of the Legislature upon
61 request, an analysis of the budget request submitted
62 under subdivision (6) of this subsection. The analysis
63 shall summarize all amounts and sources of funds
64 outside of the general revenue fund anticipated to be
65 received by each state institution of higher education
66 under its jurisdiction and the effect of such funds on the
67 budget request;

68 (8) Prepare and submit to the legislative auditor, no
69 later than the first day of July of each year, the
70 approved operating budgets of each state institution of
71 higher education under its jurisdiction for the fiscal
72 year beginning on that date and, no later than the first
73 day of August, a summary of federal and other external
74 funds received at each such institution during the
75 previous fiscal year;

76 (9) Establish a system of information and data
77 management that can be effectively utilized in the
78 development and management of higher education
79 policy, mission and goals;

80 (10) Review, at least every five years, all academic
81 programs offered at the state institutions of higher
82 education under its jurisdiction. The review shall
83 address the viability, adequacy and necessity of the
84 programs in relation to its master plan;

85 (11) Utilize faculty, students, and classified staff in
86 institutional level planning and decision-making when
87 those groups are affected;

88 (12) Administer a uniform system of personnel
89 classification and compensation for all employees other
90 than faculty and policy level administrators;

91 (13) Establish a uniform system for the hearing of
92 employee grievances and appeals therefrom, so that
93 aggrieved parties may be assured of timely and
94 objective review;

95 (14) Solicit and utilize or expend voluntary support,
96 including financial contributions and support services,
97 for the state institutions of higher education;

98 (15) Appoint a president or other administrative head
99 for each institution of higher education from candidates
100 submitted by the search and screening committees of
101 the institutional boards of advisors pursuant to section
102 one, article six of this chapter;

103 (16) Conduct performance evaluations of each institu-
104 tion's president in every fourth year of employment as
105 president, recognizing unique characteristics of the
106 institution and utilizing institutional personnel, institu-
107 tional boards of advisors, staff of the appropriate
108 governing board and persons knowledgeable in higher
109 education matters who are not otherwise employed by
110 a governing board;

111 (17) Submit to the joint committee on government and
112 finance, no later than the first day of December of each
113 year, an annual report of the performance of the system
114 of higher education under its jurisdiction during the
115 previous fiscal year as compared to stated goals in its
116 master plan and budget appropriations for that fiscal
117 year.

118 (b) The power herein given to each governing board
119 to prescribe and allocate among the state institutions of
120 higher education under its jurisdiction specific functions
121 and responsibilities to meet the higher educational needs
122 of the state and avoid unnecessary duplication shall not
123 be restricted by any provision of law assigning specified
124 functions and responsibilities to designated state
125 institutions of higher education, and such power shall
126 supersede any such provision of law: *Provided, That*

127 each governing board may delegate, with prescribed
128 standards and limitations, such part of its power and
129 control over the business affairs of a particular state
130 institution of higher education to the president or other
131 administrative head of such state institution of higher
132 education in any case where it deems such delegation
133 necessary and prudent in order to enable such institu-
134 tion to function in a proper and expeditious manner:
135 *Provided, however,* That such delegation shall not be
136 interpreted to include classification of employees, lawful
137 appeals made by students in accordance with the
138 appropriate governing board's policy, lawful appeals
139 made by faculty or staff, or final review of new or
140 established academic or other programs. Any such
141 delegation of power and control may be rescinded by the
142 appropriate governing board at any time, in whole or
143 in part.

§18B-1-9. Powers and duties of institutional presidents.

1 Except as is otherwise provided by law or rule, the
2 president or other administrative head of each state
3 institution of higher education shall exercise all the
4 duties and powers conferred by law in the government
5 of the institution under such person's management and
6 control and, subject to review by the appropriate
7 governing board, shall have the authority and respon-
8 sibility for overseeing the routine matters of the
9 institution, which include, but are not limited to, travel
10 approval, sabbaticals, budget oversight and special
11 student fees. The president or other administrative head
12 shall assist the chancellors in developing or evaluating
13 policy options for the governing boards, but not both
14 developing and evaluating for the same policy, and may
15 propose policy options for consideration by their
16 governing board. The president or other administrative
17 head of each state institution of higher education shall
18 also be responsible for seeking community advice on
19 academic or other programs.

§18B-1-10. Task force on faculty salaries and resource allocation.

1 Not later than the first day of July, one thousand nine

2 hundred eighty-nine, there shall be established a task
3 force on faculty salaries and resource allocation which
4 shall meet, study and make recommendations as herein
5 provided.

6 The task force shall be composed of two members of
7 the Senate appointed by the president, two members of
8 the House of Delegates appointed by the speaker, one
9 member of the faculty advisory council to the board of
10 trustees chosen by said council, one member of the
11 faculty advisory council to the board of directors chosen
12 by said council, one member of the board of trustees
13 chosen by said board, one member of the board of
14 directors chosen by said board, one institutional
15 president chosen by the presidents under the board of
16 trustees, one institutional president chosen by the
17 presidents under the board of supervisors and three
18 members appointed by the governor to represent the
19 public interest.

20 The task force shall conduct studies on faculty
21 salaries, faculty salary schedules, faculty compensation
22 and specifically on resource allocation models. The task
23 force shall develop a faculty salary program with the
24 overall goal that compares average faculty salaries with
25 similar groups of disciplines at comparable peer
26 institutions. The task force shall make such recommen-
27 dations as it deems appropriate to address needs
28 identified in the studies and shall specifically make
29 recommendations on the resource allocation model and
30 the faculty salary schedules to the board of trustees and
31 the board of supervisors.

32 Additionally, the task force shall file a report with the
33 Legislature and the governor on or before the first day
34 of December, one thousand nine hundred eighty-nine.

35 The secretary of the department of education and the
36 arts shall be responsible for staffing the task force
37 utilizing existing personnel, equipment and offices of
38 the board of trustees and the board of directors.

39 In the case of the board of trustees, the task force shall
40 recommend that the board adopt a faculty salary
41 schedule with an overall goal that compares average

42 faculty salaries with similar groups of disciplines at
43 comparable peer institutions (Doctoral I at West
44 Virginia University; Doctoral III at Marshall Univer-
45 sity; and appropriate and comparable levels at the
46 University of West Virginia College of Graduate
47 Studies, and the West Virginia School of Osteopathic
48 Medicine, Potomac State College of West Virginia
49 University and West Virginia University at
50 Parkersburg).

51 The salary program shall incorporate a minimum
52 salary schedule, approved by the Legislature, for West
53 Virginia University, Marshall University, the Univer-
54 sity of West Virginia College of Graduate Studies and
55 the West Virginia School of Osteopathic Medicine and
56 a minimum salary schedule for Potomac State College
57 of West Virginia University and West Virginia Univer-
58 sity at Parkersburg. It shall be the goal that these
59 minimum salary schedules shall be fully in effect within
60 three years after the effective implementation of those
61 schedules.

62 Salary funds shall be distributed to all of the
63 respective institutions based upon legislative intent to
64 achieve basic improvements in compensation for all
65 employees with any additional funds being distributed
66 to the respective institutions based on the proportion
67 needed to move to parity in relation to the overall goal
68 described above. If needed, no less than fifty percent of
69 new salary funds at each institution shall be used to
70 assure that the appropriate minimum schedule is so
71 implemented.

ARTICLE 2. UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES.

- §18B-2-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.
- §18B-2-2. Meetings and compensation.
- §18B-2-3. Additional duties of board of trustees.
- §18B-2-4. Establishment and operation of graduate college; transfer of programs, etc., of Kanawha Valley Graduate Center of West Virginia University.

§18B-2-5. Establishment and operation of a state school of osteopathic medicine; authority and duty to purchase property, expend appropriations and conduct programs of the West Virginia School of Osteopathic Medicine.

§18B-2-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

1 (a) The board of trustees shall consist of seventeen
2 persons, of whom one shall be the chancellor of the
3 board of directors of the state college system, ex officio,
4 who shall not be entitled to vote; one shall be the state
5 superintendent of schools, ex officio, who shall not be
6 entitled to vote; one shall be the chairman of the
7 advisory council of students, ex officio, who shall be
8 entitled to vote; one shall be the chairman of the
9 advisory council of faculty, ex officio, who shall be
10 entitled to vote; and one shall be the chairman of the
11 advisory council of classified employees, ex officio, who
12 shall be entitled to vote. The other twelve trustees shall
13 be citizens of the state, appointed by the governor, by
14 and with the advice and consent of the Senate.

15 Each of the trustees appointed to the board by the
16 governor shall represent the public interest and shall be
17 especially qualified in the field of higher education by
18 virtue of the person's knowledge, learning, experience or
19 interest in the field.

20 Except for the ex officio trustees, no person shall be
21 eligible for appointment to membership on the board of
22 trustees who is an officer, employee or member of an
23 advisory board of any state college or university, an
24 officer or member of any political party executive
25 committee, the holder of any other public office or
26 public employment under the federal government or
27 under the government of this state or any of its political
28 subdivisions, or an appointee or employee of the board
29 of trustees or the board of directors. Of the twelve
30 trustees appointed by the governor from the public at
31 large, not more than six thereof shall belong to the same
32 political party and at least two trustees shall be
33 appointed from each congressional district.

34 Except as provided in this section, no other person
35 may be appointed to the board.

36 (b) The governor shall appoint twelve trustees as soon
37 after the first day of July, one thousand nine hundred
38 eighty-nine, as is practicable, and the original terms of
39 all trustees shall commence on that date.

40 The terms of the trustees appointed by the governor
41 shall be for overlapping terms of six years, except, of
42 the original appointments, four shall be appointed to
43 terms of two years, four shall be appointed to terms of
44 four years, and four shall be appointed to terms of six
45 years. Each subsequent appointment which is not for the
46 purpose of filling a vacancy in an unexpired term shall
47 be for a term of six years.

48 The governor shall appoint a trustee to fill any
49 vacancy among the twelve trustees appointed by the
50 governor, by and with the advice and consent of the
51 Senate, which trustee appointed to fill such vacancy
52 shall serve for the unexpired term of the vacating
53 trustee. The governor shall fill the vacancy within sixty
54 days of the occurrence of the vacancy.

55 All trustees appointed by the governor shall be
56 eligible for reappointment: *Provided*, That a person who
57 has served as a trustee or director during all or any part
58 of two consecutive terms shall be ineligible to serve as
59 a trustee or director for a period of three years
60 immediately following the second of the two consecutive
61 terms.

62 The chairman of the advisory council of students, ex
63 officio; the chairman of the advisory council of faculty,
64 ex officio; and the chairman of the advisory council of
65 classified employees, ex officio, shall serve the terms for
66 which they were elected by their respective advisory
67 councils. These members shall be eligible to succeed
68 themselves.

69 (c) Before exercising any authority or performing any
70 duties as a trustee, each trustee shall qualify as such by
71 taking and subscribing to the oath of office prescribed
72 by section five, article four of the constitution of West

73 Virginia, and the certificate thereof shall be filed with
74 the secretary of state.

75 (d) No trustee appointed by the governor shall be
76 removed from office by the governor except for official
77 misconduct, incompetence, neglect of duty or gross
78 immorality, and then only in the manner prescribed by
79 law for the removal of the state elective officers by the
80 governor.

§18B-2-2. Meetings and compensation.

1 (a) The board of trustees shall hold at least ten
2 meetings in every fiscal year, including an annual
3 meeting each June: *Provided*, That an annual meeting
4 for the purpose of selecting the first chairman shall be
5 held during July, one thousand nine hundred eighty-
6 nine. Except for the annual meeting, which may be held
7 at a location anywhere in the state, the said meetings
8 shall be held on different campuses of institutions in the
9 university system on a rotating basis or at the central
10 office. The board of trustees may set aside time at the
11 meetings at the campuses to afford administrators,
12 faculty, students and classified staff at the institution an
13 opportunity to discuss issues affecting these groups. The
14 board of trustees shall hold at least one meeting each
15 year with the advisory council of faculty, the advisory
16 council of students, and the advisory council of classified
17 employees, each of these bodies to be met with separ-
18 ately. Except as otherwise provided in this section,
19 meetings shall be held on such dates and at such places
20 as the trustees may prescribe. In addition to the
21 statutorily required meetings, the trustees may meet at
22 such other times as may be necessary, such meetings to
23 be held upon its own resolution or at the written request
24 of at least three appointed trustees.

25 Of the fifteen voting members of the board of trustees,
26 eight shall constitute a quorum, and a majority vote of
27 the quorum shall be necessary to pass upon matters
28 before the trustees.

29 (b) The trustees shall be reimbursed for actual and
30 necessary expenses incident to the performance of such
31 duties upon presentation of an itemized sworn statement

32 thereof. The foregoing reimbursement for actual and
33 necessary expenses shall be paid from appropriations
34 made by the Legislature to the trustees.

§18B-2-3. Additional duties of board of trustees.

1 (a) The trustees shall govern the University of West
2 Virginia. The trustees shall develop a master educa-
3 tional plan for the university system in the state,
4 establish research policies for the several institutions
5 within the university system and shall oversee graduate,
6 professional and medical education at the appropriate
7 institutions of higher education under their jurisdiction
8 to the end of avoiding duplication in advanced study,
9 specialty institutes and research.

10 (b) The board of trustees shall adopt a faculty salary
11 program with an overall goal that compares average
12 faculty salaries with similar groups of disciplines at
13 comparable peer institutions (Doctoral I at West
14 Virginia University; Doctoral III at Marshall Univer-
15 sity; and appropriate levels at the University of West
16 Virginia College of Graduate Studies, Potomac State
17 College of West Virginia University, West Virginia
18 University at Parkersburg and the School of Osteopa-
19 thic Medicine as determined by the Board of Trustees).
20 Salary funds shall be distributed to the respective
21 institutions based on the proportion needed to move to
22 parity in relation to the overall goal described above.
23 The salary program shall incorporate a minimum salary
24 schedule which shall be fully in effect within three years
25 after the effective date of this section. If needed, up to
26 fifty percent of new salary funds at each institution shall
27 be used to assure that the minimum schedule is so
28 implemented. The existing minimum salary schedule as
29 set forth within the provisions of article eight of this
30 chapter shall remain in effect until the board of trustees
31 adopts the salary program mandated herein and is then
32 repealed.

§18B-2-4. Establishment and operation of graduate college; transfer of programs, etc., of Kanawha Valley Graduate Center of West Virginia University.

1 The power of the board of regents, effective July one,
2 one thousand nine hundred seventy-two, to establish,
3 name, maintain and operate a graduate college whose
4 major administrative offices are located in Kanawha
5 county shall be transferred to the board of trustees
6 effective July one, one thousand nine hundred eighty-
7 nine, and shall be known as the "University of West
8 Virginia College of Graduate Studies". The board of
9 trustees shall employ a president and such staff and
10 faculty as determined appropriate for the school,
11 appoint an advisory board consistent with section one,
12 article six of this chapter and shall exercise general
13 determination, control, supervision and management of
14 the financial, business and educational policies and
15 affairs of the graduate college. The college shall be
16 authorized to offer, in their entirety or in cooperation
17 with other institutions, such curricula, programs,
18 courses and services and confer such graduate degrees
19 as may be approved by the board of trustees. The
20 trustees shall fix tuition and establish and set other fees
21 to be charged students as it deems appropriate, includ-
22 ing the establishment of special fees for specific
23 purposes. Special fees shall be paid into special funds
24 and used only for the purposes for which collected. The
25 board of trustees may allocate from the appropriations
26 for the state university system for the operation and
27 capital improvement of the graduate college.

28 All programs, activities, operations, accounts, and
29 resources of the Kanawha Valley Graduate Center of
30 West Virginia University which were transferred to the
31 graduate college, and the title to all property of the
32 Kanawha Valley Graduate Center of West Virginia
33 University which was transferred to or later vested in
34 the graduate college, shall be transferred to and remain
35 vested in the trustees. The trustees are authorized to
36 enter into contracts on behalf of the graduate college
37 with public and private educational institutions, agen-
38 cies and boards; with governmental agencies; and with
39 corporations, partnerships and individuals for the use of
40 physical facilities, equipment and for the performance
41 of instructional or other services.

§18B-2-5. Establishment and operation of a state school of osteopathic medicine; authority and duty to purchase property, expend appropriations and conduct programs of the West Virginia School of Osteopathic Medicine.

1 The board of trustees shall operate and maintain the
2 state school of osteopathy, known as the "West Virginia
3 School of Osteopathic Medicine" and located in Lewis-
4 burg, Greenbrier County, as previously established by
5 the board of regents, as a part of the University of West
6 Virginia as defined in section two, article one of this
7 chapter. The title to all the real property and all
8 facilities and equipment of the West Virginia School of
9 Osteopathic Medicine and the previously existing
10 Greenbrier College of Osteopathic Medicine, located at
11 Lewisburg, Greenbrier County, shall be and remain
12 vested in the board of trustees. The title to any such
13 property originally acquired by or vested in the name
14 of the board of regents is hereby transferred to and shall
15 remain vested in the board of trustees.

16 The board of trustees shall employ a president and
17 such staff and faculty as determined appropriate for the
18 school, appoint an advisory board consistent with section
19 one, article six of this chapter and exercise general
20 determination, control, supervision and management of
21 the financial, business and educational policies and
22 affairs of the school of osteopathic medicine.

23 The school shall be authorized to offer such curricula,
24 programs, courses and services and confer such degrees
25 as may be approved by the board of trustees. The board
26 of trustees shall fix tuition and establish and set other
27 fees to be charged students as it deems appropriate,
28 including the establishment of special fees for specific
29 purposes. Special fees shall be paid into special funds
30 and be used only for the purposes for which said fees
31 were collected.

32 The board of trustees shall expend from the appropri-
33 ations allocated for the West Virginia School of Osteo-
34 pathic Medicine such funds as are necessary for the
35 operation and conduct of programs, the acquisition of
36 clear title to the property of the Greenbrier College of

37 Osteopathic Medicine, and for necessary capital im-
38 provements. The title to all property purchased for the
39 use of the West Virginia School of Osteopathic Medicine
40 shall be vested in the board of trustees.

41 The board of trustees is authorized to enter into
42 contracts on behalf of the West Virginia School of
43 Osteopathic Medicine with public and private educa-
44 tional institutions, agencies and boards, with govern-
45 mental agencies and with corporations, partnerships,
46 and individuals for the performance of instructional or
47 other services.

48 The board of trustees is hereby specifically authorized
49 to contract with the West Virginia anatomical board
50 and the West Virginia anatomical board is hereby
51 specifically authorized to contract with the board of
52 trustees on behalf of the West Virginia School of
53 Osteopathic Medicine for the requisition, use, disposition
54 and control of any body as may come under the
55 authority of the anatomical board: *Provided*, That such
56 body be used exclusively for educational purposes of the
57 West Virginia School of Osteopathic Medicine.

58 The board of trustees is further authorized to contract
59 with any other person, corporation or entity for the
60 purchase of cadavers for educational purposes at the
61 West Virginia School of Osteopathic Medicine, notwith-
62 standing any provision of law to the contrary.

ARTICLE 3. BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM.

§18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

§18B-3-2. Meetings and compensation.

§18B-3-3. Additional duties of board of directors.

§18B-3-4. Community colleges.

§18B-3-5. Permits required for correspondence, business, occupational and trade schools; surety bonds and fees; issuance, renewal and revocation of permit; reports; rules and regulations; penalty and enforcement.

§18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

1 (a) The board of directors of the state college system
2 shall consist of seventeen persons, of whom one shall be
3 the chancellor of the university of West Virginia, ex
4 officio, who shall not be entitled to vote; one shall be the
5 state superintendent of schools, ex officio, who shall not
6 be entitled to vote; one shall be the chairman of the
7 advisory council of students, ex officio, who shall be
8 entitled to vote; one shall be the chairman of the
9 advisory council of faculty, ex officio, who shall be
10 entitled to vote; and one shall be the chairman of the
11 advisory council of classified employees, ex officio, who
12 shall be entitled to vote. The other twelve directors shall
13 be citizens of the state, appointed by the governor, by
14 and with the advice and consent of the Senate.

15 Each of the directors appointed to the board by the
16 governor shall represent the public interest and shall be
17 especially qualified in the field of higher education by
18 virtue of the person's knowledge, learning, experience or
19 interest in the field.

20 Except for the ex officio directors, no person shall be
21 eligible for appointment to membership on the board of
22 directors who is an officer, employee or member of an
23 advisory board of any state college or university, an
24 officer or member of any political party executive
25 committee, the holder of any other public office or
26 public employment under the federal government or
27 under the government of this state or any of its political
28 subdivisions, or an appointee or employee of the board
29 of trustees or board of directors. Of the twelve directors
30 appointed by the governor from the public at large, not
31 more than six thereof shall belong to the same political
32 party and at least two directors of the board shall be
33 appointed from each congressional district.

34 Except as provided in this section, no other person
35 may be appointed to the board.

36 (b) The governor shall appoint twelve directors as
37 soon after July one, one thousand nine hundred eighty-
38 nine, as is practicable, and the original terms of all
39 directors shall commence on that date. The terms of the
40 directors appointed by the governor shall be for

41 overlapping terms of six years, except, of the original
42 appointments, four shall be appointed to terms of two
43 years, four shall be appointed to terms of four years, and
44 four shall be appointed to terms of six years. Each
45 subsequent appointment which is not for the purpose of
46 filling a vacancy in an unexpired term shall be
47 appointed to a term of six years.

48 The governor shall appoint a director to fill any
49 vacancy among the twelve directors appointed by the
50 governor, by and with the advice and consent of the
51 Senate, which director appointed to fill such vacancy
52 shall serve for the unexpired term of the vacating
53 director. The governor shall fill the vacancy within sixty
54 days of the occurrence of the vacancy.

55 All directors appointed by the governor shall be
56 eligible for reappointment: *Provided*, That a person who
57 has served as a director or trustee during all or any part
58 of two consecutive terms shall be ineligible to serve as
59 a director for a period of three years immediately
60 following the second of the two consecutive terms.

61 The chairman of the advisory council of students, ex
62 officio; the chairman of the advisory council of faculty,
63 ex officio; and the chairman of the advisory council of
64 classified employees, ex officio, shall serve the terms for
65 which they were elected by their respective advisory
66 councils. These members shall be eligible to succeed
67 themselves.

68 (c) Before exercising any authority or performing any
69 duties as a director, each director shall qualify as such
70 by taking and subscribing to the oath of office pres-
71 cribed by section five, article four of the constitution of
72 West Virginia, and the certificate thereof shall be filed
73 with the secretary of state.

74 (d) No director appointed by the governor shall be
75 removed from office by the governor except for official
76 misconduct, incompetence, neglect of duty or gross
77 immorality, and then only in the manner prescribed by
78 law for the removal by the governor of the state elective
79 officers.

§18B-3-2. Meetings and compensation.

1 (a) The board of directors shall hold at least ten
2 meetings in every fiscal year, including an annual
3 meeting each June: *Provided*, That an annual meeting
4 for the purpose of selecting the first chairman shall be
5 held during July, one thousand nine hundred eighty-
6 nine. Except for the annual meeting, which may be held
7 at a location anywhere in the state, the said meetings
8 shall be held on different campuses of institutions in the
9 state college system on a rotating basis or at the central
10 office. The directors may set aside time at these
11 meetings held at the campuses to afford administrators,
12 faculty, students and classified staff at these institutions
13 an opportunity to discuss issues affecting these groups.
14 The directors shall hold at least one meeting each year
15 with the advisory council of faculty, the advisory council
16 of students and the advisory council of classified
17 employees, each of these bodies to be met with separ-
18 ately. Except as otherwise provided in this section,
19 meetings shall be held on such dates and at such places
20 as the directors may prescribe. In addition to the
21 statutorily required meetings, the directors may meet at
22 such other times as may be necessary, such meetings to
23 be held upon its own resolution or at the written request
24 of at least five appointed directors.

25 Of the fifteen voting members of the board of
26 directors, eight shall constitute a quorum, and a
27 majority vote of the quorum shall be necessary to pass
28 upon matters before the directors.

29 (b) The directors shall be reimbursed for actual and
30 necessary expenses incident to the performance of such
31 duties, upon presentation of an itemized sworn state-
32 ment thereof. The foregoing reimbursement for actual
33 and necessary expenses shall be paid from appropria-
34 tions made by the Legislature to the directors.

§18B-3-3. Additional duties of board of directors.

1 (a) The board of directors shall determine programs
2 to be offered by state institutions of higher education
3 under its jurisdiction.

4 (b) The directors shall govern community colleges and
5 shall organize eight community college service areas in
6 accordance with section four of this article.

7 (c) The board of directors of the state college system
8 shall govern the state college system. The directors shall
9 develop by the first day of January, one thousand nine
10 hundred ninety, a proposed classification plan and
11 salary plan for full-time faculty based upon the level of
12 program being taught by said full-time faculty member,
13 whether baccalaureate programs or associate level
14 programs. The classification plan and salary plan shall
15 be submitted to the secretary of education and the arts
16 for approval.

§18B-3-4. Community colleges.

1 (a) Effective the first day of July, one thousand nine
2 hundred eighty-nine, the following institutions are
3 hereby established or continued as freestanding com-
4 munity colleges: Southern West Virginia Community
5 College and West Virginia Northern Community
6 College. On or before the first day of July, one thousand
7 nine hundred ninety, the board of directors may
8 designate other facilities, centers, locations and schools
9 as freestanding community colleges. Such freestanding
10 community colleges shall not be operated as branches or
11 off-campus locations of any other state institution of
12 higher education.

13 (b) The directors, in accordance with article two-b,
14 chapter eighteen of this code, shall cooperate with the
15 state board of vocational education, the state council of
16 vocational-technical education, and the joint commission
17 for post-secondary occupational education to develop a
18 network of post-secondary vocational, job training and
19 other educational centers, utilizing existing community
20 colleges and programs, other existing facilities, and
21 existing training needs within the service area. The
22 community colleges shall be organized into eight
23 community college service areas which shall have the
24 same boundaries as the regional educational service
25 agencies established by the state board of education

26 pursuant to section twenty-six, article two, chapter
27 eighteen of this code: *Provided*, That any community
28 college and the branches thereof existing on the effective
29 date of this section may be located in more than one
30 community college service area created pursuant to this
31 section and shall not be affected by such service area
32 boundary.

33 (c) A separate division of community colleges shall be
34 established under the board of directors and supervised
35 by the vice chancellor for community colleges. The
36 community colleges shall be responsible directly to and
37 subject to the governance of the vice chancellor for
38 community colleges, who shall regularly convene the
39 presidents or other administrative heads of the commun-
40 ity colleges as a community college council.

41 The vice chancellor for community colleges shall
42 consider (1) existing branch colleges, community college
43 components, off-campus locations, and, through agree-
44 ments with the state board of vocational education,
45 vocational technical centers included within the boun-
46 daries of the eight community college service areas and
47 (2) the needs of each such region in determining the
48 enrollment, programs and functions of all community
49 colleges, and the names and locations of newly desig-
50 nated community colleges: *Provided*, That programs at
51 community colleges shall be two years or less in
52 duration.

53 (d) The board of directors may fix tuition and
54 establish and set such other fees to be charged students
55 as it deems appropriate, and shall pay such tuition and
56 fees collected into a revolving fund for the partial or full
57 support, including the making of capital improvements,
58 of any community college established, continued or
59 designated hereunder. Funds collected at any such
60 community college may be used only for the benefit of
61 that community college. The board of directors may also
62 establish special fees for such purposes as, including,
63 but not limited to, health services, student activities,
64 student recreation, athletics or any other extracurricu-
65 lar purposes. Such special fees shall be paid into special
66 funds and used only for the purposes for which collected.

67 Moneys collected at a branch college or off-campus
68 location of a state institution of higher education which
69 is subsequently designated as a community college shall
70 be transferred to and vested in the successor community
71 college.

72 (e) The board of directors may allocate funds from the
73 appropriations for the state college system for the
74 operation and capital improvement of any community
75 college continued, established or designated under
76 authority of this section and may accept federal grants
77 and funds from county boards of education, other local
78 governmental bodies, corporations or persons. The
79 directors may enter into memoranda of agreements with
80 such governmental bodies, corporations or persons for
81 the use or acceptance of local facilities and/or the
82 acceptance of grants or contributions toward the cost of
83 the acquisition or construction of such facilities. Such
84 local governmental bodies may convey capital improve-
85 ments, or lease the same without monetary considera-
86 tion, to the board of directors for the use by the
87 community college, and the board of directors may
88 accept such facilities, or the use or lease thereof, and
89 grants or contributions for such purposes from such
90 governmental bodies, the federal government or any
91 corporation or person.

**§18B-3-5. Permits required for correspondence, business,
occupational and trade schools; surety bonds
and fees; issuance, renewal and revocation
of permit; reports; rules and regulations;
penalty and enforcement.**

1 It shall be unlawful for any person representing a
2 correspondence, business, occupational or trade school
3 inside or outside this state to solicit, sell or offer to sell
4 courses of instruction to any resident of this state for
5 consideration or remuneration unless the school first
6 obtains a permit from the West Virginia board of
7 directors in the manner and on the terms herein
8 prescribed.

9 The application for a permit shall be made on forms
10 to be furnished by the board, and a ten dollar fee shall

11 be required. The application shall be accompanied by a
12 surety bond in the penal sum of thirty-five thousand
13 dollars for any school which has its physical facilities
14 located in this state and which has operated in this state
15 for at least ten years. For any other school a surety bond
16 in the penal sum of not less than thirty-five thousand
17 dollars, but not more than one hundred thousand
18 dollars, shall be required, such amount to be determined
19 in accordance with the rules of the board of directors.
20 Schools with more than one campus within the state
21 shall be required to provide a bond for each of its
22 campuses in an amount equal to the bond required for
23 its oldest established campus in this state. The bond may
24 be continuous and shall be conditioned to provide
25 indemnification to any student suffering loss as a result
26 of any fraud or misrepresentation used in procuring the
27 student's enrollment or failure of the school to meet
28 contractual obligations. The bond shall be given by the
29 school itself as a blanket bond covering all of its
30 representatives. The surety on any such bond may
31 cancel the same upon giving thirty days' notice in
32 writing to the principal on said bond and to the state
33 board of directors and thereafter shall be relieved of
34 liability for any breach of condition occurring after the
35 effective date of said cancellation. The ten dollar fee will
36 entitle a school to register up to two individual solicitors.
37 Additional solicitors may be registered by paying a five
38 dollar fee for each registration submitted.

39 A permit shall be valid for one year corresponding to
40 the effective date of the bond and, upon application,
41 accompanied by the required fee and the surety bond
42 as herein required, may be renewed. All fees collected
43 for the issuance or renewal of such permit shall be
44 deposited in the state treasury to the credit of the board
45 of directors.

46 The board may refuse a permit to any school if the
47 board finds that the school engages in practices which
48 are inconsistent with this section or with rules and
49 regulations issued pursuant thereto. A permit issued
50 hereunder, upon fifteen days' notice and after a hearing,
51 if a hearing is requested by the school, may be sus-

52 pended or revoked by the board of directors for fraud
53 or misrepresentation in soliciting or enrolling students,
54 for failure of the school to fulfill its contract with one
55 or more students who are residents of West Virginia, or
56 for violation of or failure to comply with any provision
57 of this section or with any regulation of the state board
58 of directors pertinent thereto. Prior to the board taking
59 any adverse action, including refusal, suspension or
60 revocation of a permit, the school shall be given
61 reasonable opportunity to take corrective measures. Any
62 refusal, suspension or revocation of a permit, or any
63 other adverse action against a school, shall comply with
64 all constitutional provisions, including due process,
65 relating to the protection of property rights.

66 All correspondence, business, occupational or trade
67 schools which have been issued a permit shall make
68 annual reports to the board of directors on forms
69 furnished by the board and shall provide such appropriate
70 information as the board reasonably may require.
71 All correspondence, business, occupational or trade
72 schools which have been issued a permit shall furnish
73 to the board of directors a list of its official representatives.
74 Each school shall be issued a certificate of
75 identification by the board of directors for each of its
76 official representatives.

77 The issuance of a permit pursuant to this section does
78 not constitute approval or accreditation of any course or
79 school. No school nor any representative of a school shall
80 make any representation stating, asserting or implying
81 that a permit issued pursuant to this section constitutes
82 approval or accreditation by the state of West Virginia,
83 state board of directors or any other department or
84 agency of the state.

85 The board of directors is hereby authorized to adopt
86 rules and conduct on-site reviews to evaluate academic
87 standards maintained by schools for the awarding of
88 certificates, diplomas and specialized associate degrees,
89 which standards may include curriculum, personnel,
90 facilities, materials and equipment: *Provided*, That in
91 the case of accredited correspondence, business, occupa-
92 tional and trade schools under permit on the effective

93 date of this section, having their physical facilities
94 located in this state, and which are accredited by the
95 appropriate nationally recognized accrediting agency or
96 association approved by the United States department
97 of education, the accrediting agency's standards,
98 procedures and criteria shall be accepted as meeting
99 applicable laws, standards, rules and regulations of the
100 board of directors: *Provided, however,* That the board of
101 directors may authorize an investigation of written
102 student complaints alleging a violation of this section,
103 or board's rules or accreditation standards and may take
104 appropriate action based on the findings of such an
105 investigation.

106 The board of directors is hereby authorized to adopt
107 rules for the awarding of any specialized associate
108 degree by accredited proprietary institutions: *Provided,*
109 That nothing contained herein shall infringe upon the
110 rights of accredited West Virginia proprietary schools
111 operating in West Virginia to confer specialized
112 associate degrees, diplomas or certificates based on
113 credit or clock hours in accordance with standards of the
114 appropriate nationally recognized accrediting agency or
115 association that is approved by the United States
116 department of education. For the purposes of this
117 section, proprietary schools that award specialized
118 associate degrees shall be defined as institutions of
119 higher education, and specialized associate degrees shall
120 mean degrees awarded by such institutions pursuant to
121 a program of not less than two academic years:
122 *Provided, however,* That nothing herein shall be
123 construed to qualify the said proprietary schools for
124 additional state moneys not otherwise qualified for
125 under other provisions of the code.

126 In regard to private, proprietary educational institu-
127 tions operating under this section of the code, accredited
128 by a national or regional accrediting agency or associ-
129 ation recognized by the United States Department of
130 Education and which provide training at a campus
131 located in this state:

132 (a) Any rule or standard which is authorized by this
133 or any section of the code or other law, and which is now

134 in effect or promulgated hereafter by the board of
135 directors (or other agency with jurisdiction) shall be
136 clearly, specifically, and expressly authorized by
137 narrowly construed enabling law and shall be unen-
138 forceable and without legal effect unless authorized by
139 an act of the Legislature under the provisions of article
140 three-a, chapter twenty-nine-a of the code;

141 (b) Notwithstanding any other provision of this
142 section or other law to the contrary, the institution's
143 accrediting agency standards, procedures, and criteria
144 shall be accepted as the standards and rules of the board
145 of directors (or other agency with jurisdiction), and as
146 meeting other law or legal requirements relating to the
147 operation of proprietary institutions which such board
148 or other agency has the legal authority to enforce under
149 any section of the code or other law: *Provided*, That
150 nothing in this section shall be construed to deny
151 students the use of remedies that would otherwise be
152 available under state or federal consumer laws or
153 federal law relating to federal college financial assist-
154 ance programs.

155 (c) Accredited institutions operating hereunder are
156 hereby recognized as post-secondary. Academic pro-
157 gress shall be measured and reported in credit hours
158 and all reports/documents filed on a credit hour basis.

159 A representative of any school violating any provision
160 of this section shall be guilty of a misdemeanor, and,
161 upon conviction thereof, shall be fined not more than two
162 hundred dollars per day of violation, not to exceed a
163 maximum of two thousand dollars per violation, or
164 imprisoned in the county jail not more than sixty days,
165 or both fined and imprisoned. No correspondence,
166 business, occupational or trade school shall maintain an
167 action in any court of this state to recover for services
168 rendered pursuant to a contract solicited by the school
169 if the school did not hold a valid permit at the time the
170 contract was signed by any of the parties thereto. The
171 attorney general or any county prosecuting attorney, at
172 the request of the board of directors or upon his or her
173 own motion, may bring any appropriate action or
174 proceeding in any court of competent jurisdiction for the

175 enforcement of the provisions of this section relating to
176 permits, bonds and sureties.

ARTICLE 3A. WEST VIRGINIA JOINT COMMISSION FOR VOCATIONAL-TECHNICAL-OCCUPATIONAL EDUCATION.

§18B-3A-1. Commission established.

§18B-3A-1a. Department of education and the arts.

§18B-3A-1b. Definitions.

§18B-3A-2. Composition of commission; terms of members; qualifications of members.

§18B-3A-3. Meeting; compensation of members.

§18B-3A-4. Duties and responsibilities.

§18B-3A-1. Commission established.

1 The West Virginia Joint Commission for Vocational-
2 Technical-Occupational Education, hereinafter referred
3 to in this article as the joint commission, is hereby
4 created, consisting of thirteen members appointed by
5 the governor, with the advice and consent of the Senate,
6 who shall be individuals broadly representative of
7 citizens and organizations within the state having an
8 interest in vocational education.

§18B-3A-1a. Department of education and the arts.

1 The joint commission herein established shall be
2 subject to the jurisdiction of the department of education
3 and the arts pursuant to the provisions of article one,
4 chapter five-f of this code, and the commission shall be
5 subject to the supervision of the secretary of the
6 department of education and the arts.

§18B-3A-1b. Definitions.

1 As used in this article:

2 (a) "Secondary vocational education" shall mean any
3 high school level course or program which results or
4 may result in a high school diploma or its equivalent,
5 under the jurisdiction of the state board of education.

6 (b) "Post-secondary vocational education" shall mean
7 any college-level course or program beyond the high
8 school level provided through an institution of higher
9 education which results in or may result in the award-
10 ing of a two-year associate degree, under the jurisdiction
11 of the board of directors.

12 (c) "Adult basic education" shall mean adult basic
13 skills education designed to satisfy the basic literacy
14 needs of adults; to improve and/or upgrade information
15 processing skills, communication skills, and computa-
16 tional skills leading to a high school equivalency
17 diploma, under the jurisdiction of the state board of
18 education.

19 (d) "Adult occupational education" shall mean adult
20 skill training beyond the high school level not leading
21 to a certificate or college credit, under the jurisdiction
22 of the joint commission for vocational-technical-occupa-
23 tional education.

24 (e) "Adult technical preparatory education" shall
25 mean adult skill training beyond the high school level,
26 but less than the associate degree, leading to a certifi-
27 cate and/or articulated with post-secondary vocational
28 education, under the jurisdiction of the joint commission
29 for vocational-technical-occupational education.

**§18B-3A-2. Composition of commission; terms of
members; qualifications of members.**

1 The members appointed by the governor shall include
2 all of the following:

3 (a) Seven individuals who shall be representatives
4 from business, industry, and agriculture, including one
5 member representing small business concerns, one
6 member of whom shall represent the governor's office
7 of community and industrial development, one member
8 of whom shall represent proprietary schools and one
9 member of whom shall represent labor organizations. In
10 selecting private sector individuals under this subdivi-
11 sion, the governor shall give due consideration to the
12 appointment of individuals who serve on a private
13 industry council or other appropriate state agencies.

14 (b) Six individuals, three of whom shall be represen-
15 tatives of secondary vocational education appointed by
16 the state superintendent of schools and three of whom
17 shall be representatives of post-secondary vocational
18 education appointed by the chancellor of the board of
19 directors.

20 In addition to the members appointed by the governor
21 the state superintendent of schools and the vice chancel-
22 lor of the board of directors shall serve as ex officio
23 members.

24 Members of the commission shall serve for overlap-
25 ping terms of four years, except that the original
26 appointments to the commission shall be for staggered
27 terms allocated in the following manner: One member
28 appointed by the chancellor, one member appointed by
29 the state superintendent of schools and two members
30 appointed by the governor for terms of two years; one
31 member appointed by the chancellor, one member
32 appointed by the state superintendent of schools and two
33 members appointed by the governor for terms of three
34 years; and one member appointed by the state superin-
35 tendent of schools, one member appointed by the
36 chancellor and three members appointed by the gover-
37 nor for terms of four years.

§18B-3A-3. Meeting; compensation of members.

1 The joint commission shall meet quarterly and may
2 meet at the request of the president, a majority of the
3 board or at the call of the secretary of education and
4 the arts. One such meeting of the joint commission shall
5 be a public forum for the discussion of the goals and
6 standards for vocational education in the state. The
7 members shall elect a president who shall serve a term
8 of one year.

9 Members of the council shall serve without compen-
10 sation. Members of the council appointed by the
11 governor shall receive their actual necessary expenses
12 incurred in the performance of their duties.

§18B-3A-4. Duties and responsibilities.

1 The joint commission shall have the duties and
2 responsibilities set forth in the provisions of section two,
3 article two-b, chapter eighteen of this code, and in
4 addition shall:

5 (a) Meet with the state board of education and the

6 board of directors, or their representatives, to advise
7 them on state plans for vocational education; and

8 (b) Advise the state board of education and the board
9 of directors, and report to the Legislature by the first
10 day of December, one thousand nine hundred eighty-
11 nine, and annually thereafter regarding all of the
12 following:

13 (1) Policies the state should pursue to strengthen
14 vocational education with special emphasis on programs
15 for the handicapped.

16 (2) Programs and methods through which the private
17 sector could undertake to assist in the modernization of
18 vocational education programs.

19 (c) Effective July one, one thousand nine hundred
20 ninety, supervise the governance of all secondary and
21 post-secondary vocational education programs in the
22 state, including the programs assisted under the federal
23 Vocational Education Act and the Job Training Part-
24 nership Act, and shall implement policies to both
25 coordinate programs of the state board of education and
26 the board of directors and to eliminate duplicative
27 programs of same.

28 (d) Coordinate the delivery of vocational-technical-
29 occupational education in a manner designed to provide
30 the greatest yet most reasonable level of accessibility to
31 students in consideration of the most efficient use of
32 available public funds.

33 (e) Encourage through articulation the most efficient
34 utilization of available resources, both public and
35 private, to meet the needs of vocational-technical-
36 occupational education students.

37 (f) Analyze and report to the governor and the
38 Legislature on the distribution of spending for voca-
39 tional education in the state and on the availability of
40 vocational education activities and services within the
41 state.

42 (g) Consult with the state board of education and the
43 board of directors on evaluation criteria for vocational
44 education programs in the state.

45 (h) Recommend to the state board of education and
46 the board of directors on the delivery of vocational
47 education programs in the state which emphasize the
48 involvement of business and labor organizations.

49 (i) Assess and report to the governor and Legislature
50 on the distribution of federal vocational education
51 funding provided under Public Law 98-524, with an
52 emphasis on the distribution of financial assistance
53 among secondary and post-secondary vocational educa-
54 tion programs.

55 (j) Recommend procedures to the state board of
56 education and the board of directors to ensure and
57 enhance public participation in the provision of voca-
58 tional education at the local level, with an emphasis on
59 programs which involve the participation of local
60 employers and labor organizations.

61 (k) Report to the state board of education, the board
62 of directors, and the Legislature on the extent to which
63 equal access to quality vocational education programs is
64 provided to handicapped and disadvantaged individuals,
65 adults who are in need of training and retraining,
66 individuals who are single parents or homemakers,
67 individuals participating in programs designed to
68 eliminate sexual bias and stereotyping in vocational
69 education, and criminal offenders serving in correc-
70 tional institutions.

71 (l) Evaluate at least once every two years:

72 (1) The adequacy and effectiveness of the vocational
73 educational systems assisted under the federal Voca-
74 tional Education Act and the Job Training Partnership
75 Act in achieving the objectives defined in those acts.

76 (2) Develop uniform guidelines for the transferability
77 of credits among institutions in the state and transfer-
78 ability of credits between and among the systems of
79 higher education and the state board of education.

80 (m) Designate lead institutions and do a region by
81 region study of existing programs, define peculiar needs

82 of each region and devise a statewide plan for secondary
83 and post-secondary vocational education.

84 (n) The secretary of the department of education and
85 the arts shall be responsible for staffing the joint
86 commission, utilizing existing personnel, equipment and
87 offices of the state board of education and the board of
88 directors.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-1. Officers of governing boards; employment of chancellors and senior administrator; offices.

§18B-4-2. Senior administrator's powers and duties generally.

§18B-4-3. Authority to participate in reciprocal regional and interstate higher educational agreements.

§18B-4-4. State agency for participation in federal and private grants to higher education; related powers and duties.

§18B-4-5. Security officers; appointment; qualifications; authority; compensation and removal.

§18B-4-6. Acquisition, operation and regulation of parking areas and facilities at state institutions of higher education; regulation of parking, speed and flow of traffic on campus roads and driveways; civil and criminal penalties; disposition of revenue.

§18B-4-7. Accreditation of institutions of higher education; standards for degrees.

§18B-4-1. Officers of governing boards; employment of chancellors and senior administrator; offices.

1 (a) At its annual meeting in June of each year, each
2 governing board shall elect from its members appointed
3 by the governor a president and such other officers as
4 it may deem necessary or desirable: *Provided*, That the
5 initial annual meeting shall be held during July, one
6 thousand nine hundred eighty-nine. The president and
7 such other officers shall be elected for a one-year term
8 commencing on the first day of July following the
9 annual meeting and ending on the thirtieth day of June
10 of the following year. The president of the board shall
11 serve no more than two consecutive terms.

12 (b) Each governing board shall employ a chancellor
13 who shall serve at the will and pleasure of the employing
14 board and shall assist the governing board in the
15 performance of its duties and responsibilities. No
16 chancellor may hold or retain any other administrative

17 position within the system of higher education while
18 employed as chancellor. Each chancellor is responsible
19 for carrying out the directives of the governing board
20 by which employed and shall work with such board in
21 developing policy options. For the purpose of developing
22 or evaluating policy options, the chancellors may request
23 the assistance of the presidents of the institutions under
24 their jurisdiction and their staffs. The respective
25 chancellors shall jointly agree to, and shall hire, one
26 senior administrator who shall serve at their will and
27 pleasure in accordance with section two of this article.

28 (c) The director of health shall serve as the vice
29 chancellor for health affairs, who shall coordinate the
30 West Virginia University School of Medicine, the
31 Marshall University School of Medicine, and the West
32 Virginia School of Osteopathic Medicine. The vice
33 chancellor for health affairs shall conduct a special
34 study of the West Virginia University School of
35 Medicine, the Marshall University School of Medicine
36 and the West Virginia School of Osteopathic Medicine
37 to determine the role and mission of said institutions in
38 the reorganized system of higher education in the state.
39 The special study shall include, but is not limited to,
40 coordinating medical education, training and delivery of
41 health services in the state; preparing nurse midwives,
42 nurse practitioners, medical technologists and other
43 members of the allied health professions; and providing
44 for rural health care. The vice chancellor shall submit
45 a report on said study to the governor and to the
46 Legislature by the first day of December, one thousand
47 nine hundred eighty-nine.

48 (d) The board of directors of the state college system
49 shall employ a vice chancellor for community colleges
50 to coordinate the community colleges.

51 (e) Suitable offices for the senior administrator and
52 other staff shall be provided in Charleston.

§18B-4-2. Senior administrator's powers and duties generally.

1 (a) The senior administrator has a ministerial duty, in
2 consultation with and under direction of the chancellors,

3 to perform such functions, tasks and duties as may be
4 necessary to carry out the policy directives of the
5 governing boards and such other duties as may be
6 prescribed by law.

7 (b) The senior administrator may employ and dis-
8 charge, and shall supervise, such professional, adminis-
9 trative, clerical and other employees as may be neces-
10 sary to these duties and shall delineate staff responsi-
11 bilities as deemed desirable and appropriate. The senior
12 administrator shall fix the compensation and emolu-
13 ments of such employees: *Provided*, That effective the
14 first day of July, one thousand nine hundred ninety,
15 those employees whose job duties meet criteria listed in
16 the system of job classifications as stated in article nine
17 of this chapter shall be accorded the job title, compen-
18 sation and rights established in said article as well as
19 all other rights and privileges accorded classified
20 employees by the provisions of this code.

21 (c) The senior administrator shall follow state and
22 national educational trends and gather data on higher
23 educational needs.

24 (d) The senior administrator, in accordance with
25 established guidelines and in consultation with and
26 under the direction of the chancellors, shall administer,
27 oversee or monitor all state and federal student assist-
28 ance and support programs administered on the state
29 level, including those provided for in chapter eighteen-
30 c of this code.

31 (e) The senior administrator has a fiduciary respon-
32 sibility to administer the tuition and registration fee
33 capital improvement revenue bond accounts of the
34 governing boards.

35 (f) The senior administrator shall administer the
36 purchasing system or systems of the governing boards.

37 (g) The senior administrator shall be responsible for
38 the management of the West Virginia network for
39 educational telecomputing (WVNET). The senior ad-
40 ministrator shall establish a computer policy board,
41 which shall be representative of both the university

42 system and the college system. It shall be the respon-
43 sibility of the computer policy board to recommend to
44 the secretary of the department of education and the
45 arts policies for a statewide shared computer system.

46 (h) Any program or service currently administered by
47 the board of regents and not specifically assigned to the
48 board of trustees or the board of directors may be
49 administered by the senior administrator. Such pro-
50 gram or service may include, but shall not be limited
51 to, telecommunications activities and other programs
52 and services provided for under grants and contracts
53 from federal and other external funding sources.

**§18B-4-3. Authority to participate in reciprocal regional
and interstate higher educational
agreements.**

1 In order to provide higher educational opportunities
2 at minimum cost to students and the state, the govern-
3 ing boards, on behalf of the state of West Virginia, are
4 authorized and empowered to participate in the South-
5 ern Regional Education Board interstate agreement,
6 namely the Academic Common Market, and in such
7 other regional and interstate agreements determined to
8 be mutually beneficial to the citizens of the participat-
9 ing states and which provide an opportunity for
10 qualified nonresident students to enroll in selected
11 programs and curricula on a resident tuition and fee
12 charge basis. Each governing board is specifically
13 authorized to waive the collection of nonresident tuition
14 and fee charges for students from other states enrolled
15 in programs and curricula under the jurisdiction of and
16 approved by the governing board as a part of a regional
17 or interstate agreement.

**§18B-4-4. State agency for participation in federal and
private grants to higher education; related
powers and duties.**

1 The governing boards, on behalf of the state of West
2 Virginia, are authorized and empowered to apply for,
3 to accept and administer and expend for the purpose or
4 purposes designated, any funds which now are, or may
5 be made, available to the governing boards or to any

6 institution under their jurisdiction from federal or
7 private grants, appropriations, allocations and
8 programs.

9 The governing boards have the power:

10 (1) To receive and disburse funds appropriated by the
11 federal government for the construction, equipment, and
12 improvement of academic facilities of institutions of
13 higher education as required by the federal Higher
14 Education Facilities Act of 1963, and any and all
15 subsequent acts of Congress relating to the same subject;

16 (2) To apply for, receive, and administer, subject to
17 any applicable regulations or laws of the federal
18 government or any agency thereof, any federal grants,
19 appropriations, allocations, and programs for the
20 development of academic facilities on behalf of the state
21 of West Virginia, or any institution of higher education,
22 public or private, within the state;

23 (3) To develop, alter, amend, and submit to the federal
24 government state plans for participation in federal
25 grants, appropriations, allocations, and programs for
26 the development of academic facilities and to formulate
27 rules, criteria, methods, forms, procedures, and to do all
28 other things which may be necessary to make possible
29 the participation of the state in such federal grants,
30 appropriations, allocations, and programs for the
31 development of academic facilities;

32 (4) To hold hearings, and render decisions as to the
33 priority assigned to any project, or as to any other
34 matter or determination affecting any applicant for
35 federal grants, appropriations, allocations and programs
36 for the development of academic facilities;

37 (5) To hire personnel, purchase materials, make
38 studies and reports, enter into contracts, and do all other
39 things necessary to accomplish the duties as set forth in
40 this section within the limits of the funds available.

**§18B-4-5. Security officers; appointment; qualifications;
authority; compensation and removal.**

1 The governing boards are hereby authorized to

2 appoint bona fide residents of this state to act as security
3 officers upon any premises owned or leased by the state
4 of West Virginia and under the jurisdiction of the
5 governing boards, subject to the conditions and restric-
6 tions hereinafter imposed. Before performing duties as
7 a security officer in any county, each person so ap-
8 pointed shall qualify therefor in the same manner as is
9 required of county officers by the taking and filing an
10 oath of office as required by article one, chapter six of
11 this code and by posting an official bond as required by
12 article two, chapter six of this code. No security officer
13 shall have authority to carry a gun or any other
14 dangerous weapon until a license therefor has been
15 obtained in the manner prescribed by section two,
16 article seven, chapter sixty-one of this code.

17 It shall be the duty of any person so appointed and
18 qualified to preserve law and order on any premises
19 under the jurisdiction of the governing boards and on
20 any other street, road or thoroughfare, except controlled
21 access and open country highways, adjacent to or
22 passing through such premises, to which the person may
23 be assigned by the president or other administrative
24 head of the state institution of higher education. For this
25 purpose the security officer shall, as to offenses
26 committed within any area so assigned, have and may
27 exercise all the powers and authority and shall be
28 subject to all the responsibilities of a law-enforcement
29 officer as defined in section one, article twenty-nine,
30 chapter thirty of this code and shall be eligible for law-
31 enforcement training at an approved academy under
32 said article, notwithstanding provisions to the contrary
33 therein. The assignment of security officers to the duties
34 authorized by this section shall not be deemed to
35 supersede in any way the authority or duty of other
36 peace officers to preserve law and order on such
37 premises. In addition, the security officers appointed
38 under provisions of this section shall have authority to
39 assist local peace officers on public highways in the
40 control of traffic in and around premises owned by the
41 state of West Virginia whenever such traffic is gener-
42 ated as a result of athletic or other activities conducted
43 or sponsored by a state institution of higher education

44 and when such assistance has been requested by the
45 local peace officers.

46 The salary of all such security officers shall be paid
47 by the appropriate governing board. Each state institu-
48 tion may furnish each such security officer with an
49 official uniform to be worn while on duty and shall
50 furnish and require each such officer while on duty to
51 wear a shield with an appropriate inscription and to
52 carry credentials certifying to the person's identity and
53 authority as a security officer.

54 The governing boards may at their pleasure revoke
55 the authority of any security officer. The president or
56 other administrative head of the state institution of
57 higher education shall report the termination of
58 employment of a security officer by filing a notice to
59 that effect in the office of the clerk of each county in
60 which the security officer's oath of office was filed, and
61 in the case of a security officer licensed to carry a gun
62 or other dangerous weapon, by notifying the clerk of the
63 circuit court of the county in which the license therefor
64 was granted.

**§18B-4-6. Acquisition, operation and regulation of park-
ing areas and facilities at state institutions of
higher education; regulation of parking,
speed and flow of traffic on campus roads
and driveways; civil and criminal penalties;
disposition of revenue.**

1 (a) The governing boards are hereby authorized to
2 construct, maintain and operate automobile parking
3 facilities or areas upon any premises owned or leased at
4 any state institution of higher education under their
5 jurisdiction for use by students, faculty, staff and
6 visitors. The governing boards may charge fees for use
7 of the parking facilities or areas under their control. All
8 moneys collected for the use of the parking facilities or
9 areas shall be paid to the credit of the state institution
10 of higher education at which the fees were charged into
11 a special fund which is hereby created in the state
12 treasury. The moneys in the fund shall be used first to
13 pay the cost of maintaining and operating the parking

14 facilities or areas, but any excess not needed for this
15 purpose may be used for the acquisition of property by
16 lease or purchase and the construction thereon of
17 additional parking facilities or areas. Any money in the
18 fund not needed immediately for the acquisition,
19 construction, maintenance or operation of the parking
20 facilities or areas may be temporarily invested by the
21 governing boards with the state board of investments to
22 the credit of the state institution of higher education at
23 which the fees were charged.

24 (b) Notwithstanding any other motor vehicle or traffic
25 law or regulation to the contrary, the governing boards
26 are hereby authorized to regulate and control at any
27 state institution of higher education under their
28 jurisdiction the speed, flow and parking of vehicles on
29 campus roads, driveways and parking facilities or areas.
30 Rules for this purpose shall be promulgated by the
31 governing boards in the manner prescribed in chapter
32 twenty-nine-a of this code and when so promulgated
33 shall have the force and effect of law. In each parking
34 facility or area a summary of the rules governing the
35 use of the facility or area including, but not limited to,
36 the availability of temporary parking permits and
37 where same may be obtained, and of the penalties which
38 may be imposed for violations of the rules shall be
39 conspicuously posted. Along each campus road and
40 driveway, notice signs pertaining to the speed of
41 vehicles, spaces available for parking, directional flow
42 of traffic and penalties which may be imposed for
43 violations of the rules shall be conspicuously posted.

44 (c) Any person parking any vehicle or operating any
45 vehicle in violation of the rules shall be issued a citation
46 describing the offense charged and ordering an appear-
47 ance within ten days, excluding Saturdays, Sundays and
48 holidays observed by the college or university, before a
49 designated official of the state institution of higher
50 education and, if the person cited fails to appear within
51 said ten days, ordering an appearance before a magis-
52 trate located in the county in which the state institution
53 of higher education is located or before the judge of the
54 municipal court, if the state institution of higher

55 education is located within a municipality having such
56 an official.

57 The designated official of the state institution of
58 higher education shall have exclusive jurisdiction of the
59 offense during the ten-day period. Any person so cited
60 may plead no contest to the offense and, by so pleading,
61 shall be subject to a civil penalty to be determined
62 uniformly by the designated official and commensurate
63 with the severity of the offense in an amount not more
64 than ten dollars for each offense as partial reimburse-
65 ment to the state institution of higher education for the
66 cost of regulating traffic and parking. Moneys derived
67 from civil penalties imposed herein shall be deposited
68 in the special fund in the state treasury created by this
69 section and credited to the state institution of higher
70 education at which the penalty was paid.

71 Upon the expiration of the ten days, or upon a
72 pleading of not guilty before the designated official of
73 the state institution of higher education within the ten
74 days, the magistrate or judge of the municipal court
75 shall have jurisdiction of the offense, and any person
76 cited under the provisions of this section, upon a finding
77 of guilty by the magistrate or municipal judge, shall be
78 subject to a fine of not less than ten dollars nor more
79 than twenty dollars for each offense, the amount to be
80 commensurate with the severity of the offense.

81 Each designated official of the state institution of
82 higher education presiding over a case under the
83 provisions of this section shall keep or cause to be kept
84 a record of every citation which alleges a violation of
85 such provisions, or the rules promulgated in accordance
86 therewith, and shall keep a record of every official
87 action in reference thereto including, but not limited to,
88 a record of every plea of no contest, conviction or
89 acquittal of the offense charged and the amount of the
90 fine or of the civil penalty resulting from each citation.

91 (d) Whenever a vehicle is parked on any state insti-
92 tution of higher education campus road, driveway or
93 parking facility or area in a manner which violates
94 posted rules and substantially impedes the flow of

96 tion may, in addition to the issuing of a citation and
97 subsequent procedures set forth herein, remove the
98 vehicle, by towing or otherwise, to an area owned by the
99 institution or areas designated for this purpose. The
100 vehicle, having been towed to the designated area or
101 areas, may be rendered immovable by use of locking
102 wheel blocks or other device not damaging to the
103 vehicle. The state institution of higher education shall
104 maintain any vehicle so towed in the same condition as
105 it was immediately prior to being towed, but shall not
106 be liable for any damage to a vehicle towed to, or kept
107 in, a designated area pursuant to the provisions of this
108 section. The state institution of higher education shall
109 pay for the cost of removing the vehicle and shall have
110 a right to reimbursement from the owner for this cost
111 and for the reasonable cost of keeping the vehicle in the
112 designated area. Until payment of these costs, the state
113 institution of higher education may retain possession of
114 the vehicle, and the institution shall have a lien on the
115 vehicle for the amount due. The state institution of
116 higher education may enforce this lien in the manner
117 provided in section fourteen, article eleven, chapter
118 thirty-eight of this code for the enforcement of other
119 liens.

**§18B-4-7. Accreditation of institutions of higher
education; standards for degrees.**

1 The appropriate governing board shall make rules for
2 the accreditation of institutions of higher education in
3 this state under its jurisdiction and shall determine the
4 minimum standards for the conferring of degrees. No
5 institution of higher education may confer any degree
6 on any basis of work or merit below the minimum
7 standards prescribed by the appropriate governing
8 board. Nothing contained herein shall infringe upon the
9 rights, including rights to award degrees, granted to
10 any institution by charter given according to law, or by
11 actions of the governing boards or their predecessors,
12 prior to the adoption of this section.

13 No charter or other instrument containing the right
14 to confer degrees of higher educational status shall be
15 granted by the state of West Virginia to any institution,

16 association or organization within the state, nor shall
17 any such degree be awarded, until the condition of
18 conferring such degree has first been approved in
19 writing by the appropriate governing board.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-1. Budget appropriations.

§18B-5-2. Allocation of appropriations.

§18B-5-3. Authority to contract for programs, services and facilities.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment and printing.

§18B-5-5. Prequalification disclosure by vendors; register of vendors; exceptions; suspension of vendors.

§18B-5-6. Other code provisions relating to purchasing not controlling; exceptions; criminal provisions and penalties; financial interest of governing boards, etc.; receiving anything of value from interested party and penalties therefor; application of bribery statute.

§18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials; inventories.

§18B-5-1. Budget appropriations.

1 The budget appropriations for the state system of
2 higher education under this chapter and other provi-
3 sions of law shall consist of three major areas of
4 appropriation consisting of (1) an appropriation for the
5 higher education governing boards which shall be for
6 the operation of the governing boards, the central office,
7 the senior administrator and the staff of the senior
8 administrator, (2) separate control accounts or institu-
9 tional control accounts, or some combination of such
10 accounts, for appropriations to the board of trustees to
11 be allocated to the institutions under the state university
12 system and to the board of directors to be allocated to
13 the state college system, and (3) such special tuition and
14 registration fee special capital improvement funds and
15 revenue bond funds as may be necessary for the
16 disposition of tuition and registration fee collections to
17 protect the interests of all holders of obligations for
18 which such fees were pledged by the board of regents
19 and shall remain pledged under the governing boards.

20 The appropriations for the state university system and
21 the state college system until the first day of July, one

22 thousand nine hundred ninety-one, shall be in the same
23 percentages of the total of the appropriations to such
24 accounts as the percentages of the combined institutions
25 under such systems received in allocations in the fiscal
26 year one thousand nine hundred eighty-eight—eighty-
27 nine.

§18B-5-2. Allocation of appropriations.

1 From appropriations for the higher education govern-
2 ing boards, the governing boards shall jointly allocate
3 funds for the operation of the central office under the
4 senior administrator and shall share equally the cost of
5 suitable offices for the senior administrator and other
6 staff in Charleston.

7 Any tuition and registration fee collections paid into
8 tuition and registration fee special capital improvement
9 funds and special revenue bond funds which accrue in
10 excess of the amounts necessary to protect the interests
11 of all holders of obligations for which such fees were
12 pledged by the board of regents and shall remain
13 pledged under the governing boards, shall be allocated
14 to each governing board in proportion to the amounts
15 of such fees collected through the institutions under its
16 jurisdiction and shall be deposited in special capital
17 improvement funds in the state treasury under the name
18 of the governing board for expenditure for capital
19 improvements at the institutions under the appropriate
20 board's jurisdiction.

§18B-5-3. Authority to contract for programs, services and facilities.

1 The governing boards are authorized and empowered
2 to enter into contracts and expend funds for programs,
3 services and facilities provided by public and private
4 educational institutions, associations, boards, agencies,
5 consortia, corporations, partnerships, individuals and
6 local, state and federal governmental bodies within and
7 outside of West Virginia in order that maximum higher
8 educational opportunities of high quality may be
9 provided to the citizens of the state in the most
10 economical manner: *Provided*, That in no event shall a
11 contract for such services and facilities be entered into

12 unless the governing boards have determined that such
13 services and facilities are necessary and that such
14 services and facilities would be at a savings to the state.

15 Notwithstanding the provisions of this section, nothing
16 herein contained shall supersede the responsibility and
17 respective duties of the commissioner of finance and
18 administration, the director of the purchasing division
19 of such department and the attorney general for the
20 execution and approval of the contracts entered into
21 under this article and such contracts shall be in
22 complete conformity with the provisions of articles three
23 and five, chapter five-a of this code.

**§18B-5-4. Purchase or acquisition of materials, supplies,
equipment and printing.**

1 (a) Each governing board, through the senior admin-
2 istrator, shall purchase or acquire all materials,
3 supplies, equipment and printing required for that
4 board, and the state institutions of higher education
5 under its jurisdiction. The governing boards shall adopt
6 rules governing and controlling acquisitions and
7 purchases in accordance with the provisions of this
8 section. Such rules shall assure that the governing
9 board: (1) Shall not preclude any person from partici-
10 pating and making sales thereof to the board except as
11 otherwise provided in section five of this article; (2) shall
12 establish and prescribe specifications, in all proper
13 cases, for materials, supplies, equipment and printing to
14 be purchased; (3) shall adopt and prescribe such
15 purchase order, requisition or other forms as may be
16 required; (4) shall negotiate for and make purchases and
17 acquisitions in such quantities, at such times and under
18 contract, in the open market or through other accepted
19 methods of governmental purchasing as may be prac-
20 ticable in accordance with general law; (5) shall
21 advertise for bids on all purchases exceeding five
22 thousand dollars, to purchase by means of sealed bids
23 and competitive bidding or to effect advantageous
24 purchases through other accepted governmental me-
25 thods and practices; and (6) shall post in a public place
26 in the central office of the governing boards, in the
27 purchasing office of the specific institution involved in

28 the purchase and in the office of the department of
29 purchases, available to the public during all business
30 hours, notices of all acquisitions and purchases for
31 which competitive bids are being solicited, at least two
32 weeks prior to making such purchases.

33 The governing boards shall further adopt rules
34 relating to purchasing in the open market pursuant to
35 section thirteen, article three, chapter five-a of this code,
36 and shall further make provision for vendor notification
37 of bid solicitation and emergency purchasing.

38 Any or all bids may be rejected. However, all
39 purchases based on advertised bid requests shall be
40 awarded to the lowest responsible bidder taking into
41 consideration the qualities of the articles to be supplied,
42 their conformity with specifications, their suitability to
43 the requirements of the governing boards and delivery
44 terms: *Provided*, That the preference for resident
45 vendors as provided in section forty-four, article three
46 of said chapter five-a shall apply to the competitive bids
47 made pursuant to this section.

48 The governing boards shall maintain a purchase file,
49 which shall be a public record and open for public
50 inspection. After the award of the order or contract, the
51 governing boards shall indicate upon the successful bid
52 that it was the successful bid, and shall further indicate
53 why bids are rejected and, if the mathematical low
54 vendor is not awarded the order or contract, the reason
55 therefor. No records in the purchase file shall be
56 destroyed without the written consent of the legislative
57 auditor.

58 (b) The governing boards shall also adopt rules to
59 prescribe qualifications to be met by any person who,
60 on and after the effective date of this section, is to be
61 employed as a buyer pursuant to this section. Such rules
62 shall provide that no person shall be employed as a
63 buyer unless such person, at the time of employment,
64 either is (1) a graduate of an accredited college or
65 university or (2) has at least four years' experience in
66 purchasing for any unit of government or for any
67 business, commercial or industrial enterprise. Any

68 person making purchases and acquisitions pursuant to
69 this section shall execute a bond in the penalty of fifty
70 thousand dollars, payable to the state of West Virginia,
71 with a corporate bonding or surety company authorized
72 to do business in this state as surety thereon, in form
73 prescribed by the attorney general and conditioned upon
74 the faithful performance of all duties in accordance with
75 sections four through seven of this article and the rules
76 of the governing boards. In lieu of separate bonds for
77 such buyers, a blanket surety bond may be obtained.
78 Any such bond or bonds shall be filed with the secretary
79 of state. The cost of any such bond or bonds shall be paid
80 from funds appropriated to the applicable governing
81 board.

82 (c) All purchases and acquisitions shall be made in
83 consideration and within limits of available appropri-
84 ations and funds and in accordance with applicable
85 provisions of article two, chapter five-a of this code,
86 relating to expenditure schedules and quarterly allot-
87 ments of funds and in accordance with section sixteen,
88 article three of said chapter.

89 The governing boards may make requisitions upon the
90 auditor for a sum to be known as an advance allowance
91 account, in no case to exceed five percent of the total
92 of the appropriations for the board, and the auditor shall
93 draw a warrant upon the treasurer for such accounts;
94 and all such advance allowance accounts shall be
95 accounted for by the applicable governing board once
96 every thirty days or more often if required by the state
97 auditor. Such authority shall not be delegated to any
98 state institution under the control and supervision of the
99 board.

100 Contracts entered into pursuant to this section shall
101 be signed by the applicable governing board in the name
102 of the state and shall be approved as to form by the
103 attorney general. A contract that requires more than six
104 months for its fulfillment shall be filed with the state
105 auditor. The governing board shall prescribe the
106 amount of deposit or bond to be submitted with a bid
107 or contract, if any, and the amount of deposit or bond
108 to be given for the faithful performance of a contract.

109 If the governing board purchases or contracts for
110 materials, supplies, equipment and printing contrary to
111 the provisions of sections four through seven of this
112 article or the rules pursuant thereto, such purchase or
113 contract shall be void and of no effect.

114 Either governing board may request the director of
115 purchases to make available, from time to time, the
116 facilities and services of that department to the board
117 in the purchase and acquisition of materials, supplies,
118 equipment and printing, and the director of purchases
119 shall cooperate with that governing board in all such
120 purchases and acquisitions upon such request.

121 Each governing board shall permit private institu-
122 tions of higher education to join as purchasers on
123 purchase contracts for materials, supplies and equip-
124 ment entered into by that governing board. Any private
125 school desiring to join as purchasers on such purchase
126 contracts shall file with that governing board an
127 affidavit signed by the president of the institution of
128 higher education or a designee requesting that it be
129 authorized to join as purchaser on purchase contracts of
130 that governing board and agreeing that it will be bound
131 by such terms and conditions as that governing board
132 may prescribe, and that it will be responsible for
133 payment directly to the vendor under each purchase
134 contract.

**§18B-5-5. Prequalification disclosure by vendors; register
of vendors; exceptions; suspension of
vendors.**

1 (a) Every person, firm or corporation selling or
2 offering to sell to the governing boards, upon compet-
3 itive bids or otherwise, any materials, equipment,
4 supplies or printing shall comply with all of the
5 provisions of section fourteen-a, article three, chapter
6 five-a of this code and shall file with the director of the
7 purchasing division of the state of West Virginia the
8 affidavit required herein: *Provided*, That every such
9 person, firm or corporation who is presently in com-
10 pliance with said section shall not be required to
11 requalify thereunder to be able to transact business with
12 the governing boards.

13 (b) Any person, firm or corporation failing or refusing
14 to comply with said statute as herein required shall be
15 ineligible to sell or offer to sell commodities or printing
16 to the governing boards as hereinafter set forth:
17 *Provided*, That any person suspended under the provi-
18 sions of section thirty-nine of said article three shall not
19 be eligible to sell or offer to sell commodities or printing
20 to the governing boards: *Provided, however*, That the
21 governing boards shall have the power and authority to
22 suspend, for a period not to exceed one year, the right
23 and privilege of a person to bid on purchases of the
24 governing boards when there is reason to believe that
25 such person has violated any of the provisions in sections
26 four through seven of this article or the rules of the
27 governing boards pursuant thereto. Every person whose
28 right to bid has been so suspended shall be notified
29 thereof by a letter posted by registered mail containing
30 the reason for such suspension and shall have the right
31 to have the appropriate governing board's action
32 reviewed in accordance with section forty, article three,
33 chapter five-a of this code.

**§18B-5-6. Other code provisions relating to purchasing
not controlling; exceptions; criminal provi-
sions and penalties; financial interest of
governing boards, etc.; receiving anything of
value from interested party and penalties
therefor; application of bribery statute.**

1 The provisions of article three, chapter five-a of this
2 code shall not control or govern the purchase, acqui-
3 sition or other disposition of any equipment, materials,
4 supplies or printing by the governing boards, except as
5 provided in sections four through seven of this article:
6 *Provided*, That sections thirty-six, thirty-seven and
7 thirty-eight, article three of said chapter five-a shall
8 apply to all purchasing activities of the governing
9 boards.

10 Neither the governing boards, nor any employee of the
11 governing boards, shall be financially interested, or
12 have any beneficial personal interest, directly or
13 indirectly, in the purchase of any equipment, materials,

14 supplies or printing, nor in any firm, partnership,
15 corporation or association furnishing them. Neither the
16 governing boards nor any employee of said boards shall
17 accept or receive directly or indirectly from any person,
18 firm or corporation, known by the governing boards or
19 such employee to be interested in any bid, contract or
20 purchase, by rebate, gift or otherwise, any money or
21 other thing of value whatsoever, or any promise,
22 obligation or contract for future reward, or
23 compensation.

24 A person who violates any of the provisions of this
25 section shall be guilty of a misdemeanor and, upon
26 conviction thereof, shall be imprisoned in jail not less
27 than three months nor more than one year, or fined not
28 less than fifty nor more than one thousand dollars, or
29 both imprisoned and fined, in the discretion of the court:
30 *Provided*, That any person who violates any of such
31 provisions by receiving money or other thing of value
32 under circumstances constituting the crime of bribery
33 under the provisions of section three, article five-a,
34 chapter sixty-one of this code, shall, upon conviction of
35 bribery, be punished as provided in section nine of said
36 article five-a.

§18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials; inventories.

1 The governing boards shall dispose of obsolete and
2 unusable equipment, surplus supplies and other un-
3 needed materials, either by transfer to other govern-
4 mental agencies or institutions, by exchange or trade,
5 or by sale as junk or otherwise. The governing boards
6 shall adopt rules governing and controlling the disposi-
7 tion of all such equipment, supplies and materials. At
8 least ten days prior to the disposition, the governing
9 boards shall advertise, by newspaper publication as a
10 Class II legal advertisement in compliance with the
11 provisions of article three, chapter fifty-nine of this code,
12 in the county in which the equipment, supplies and
13 materials are located the availability or sales of such
14 disposable equipment, supplies and materials and may
15 sell same, in whole or in part, at public auction, or may

16 transfer, exchange or trade same to other governmental
17 agencies or institutions (if by exchange or trade, then
18 without advertising), in whole or in part, as sound
19 business practices may warrant under existing circum-
20 stances and conditions. The governing boards shall
21 inventory all such disposable equipment, supplies and
22 materials from time to time as quantity and stocks may
23 warrant, and shall make a complete annual inventory
24 thereof as of the thirty-first day of March of each year.
25 The governing boards may report such inventories to the
26 director of purchases whose services and facilities shall
27 be available to the governing boards in making advan-
28 tageous disposition of any part or all of such disposable
29 equipment, supplies and materials. Such inventories
30 shall briefly describe the disposable items, the date of
31 purchase thereof, the vendor to the applicable governing
32 board, the purchase price paid therefor and the
33 governing board's order number authorizing disposition
34 thereof and shall indicate briefly the reason said items
35 are no longer needed or can no longer be used by the
36 governing board. All such inventories shall be kept as
37 public records open to public inspection at one or more
38 of the institutions under the jurisdiction of the govern-
39 ing boards for a period of five years and may thereafter
40 be destroyed: *Provided*, That under no circumstances
41 shall any of the property described in this section be
42 sold, transferred or conveyed to any private person, firm
43 or corporation other than by public auction or as
44 provided in article eight, chapter five-a of this code.

ARTICLE 6. OTHER BOARDS AND ADVISORY COUNCILS.

§18B-6-1. Institutional boards of advisors.

§18B-6-2. Advisory councils of faculty.

§18B-6-3. Advisory councils of students.

§18B-6-4. Advisory councils of classified employees.

§18B-6-5. Creation of advisory council on federal resources; appointment, terms and qualifications of members; vacancies; compensation and expenses; meetings; quorum.

§18B-6-6. Powers and duties relating to anatomical gifts; requisition of bodies; autopsies; transportation of bodies; expenses of preservation; bond required; offenses and penalties.

§18B-6-1. Institutional boards of advisors.

1 (a) There shall be established at each state institution

2 of higher education, hereinafter referred to as the
3 "institution," excluding centers and branches thereof, an
4 institutional board of advisors. The board of advisors
5 shall consist of eleven members, including an adminis-
6 trative officer of the institution appointed by the
7 president of the institution; a full-time member of the
8 faculty with the rank of instructor or above duly elected
9 by the faculty; a member of the student body in good
10 academic standing, enrolled for college credit work and
11 duly elected by the student body; a member of the
12 institutional classified staff duly elected by the classified
13 staff; and, appointed by the appropriate governing
14 board, seven lay citizens of the state who have demon-
15 strated a sincere interest in and concern for the welfare
16 of that institution and who are representative of its
17 population and fields of study, including at least two
18 alumni of the institution. Of the seven lay citizen
19 members, no more than four may be of the same
20 political party.

21 The administrative officer, faculty member, student
22 member and classified staff member shall serve for a
23 term of one year, and the seven lay citizen members
24 shall serve terms of four years each. All members shall
25 be eligible to succeed themselves for no more than one
26 additional term. A vacancy in an unexpired term of a
27 member shall be filled within sixty days of the occur-
28 rence thereof in the same manner as the original
29 appointment or election. Except in the case of a vacancy,
30 all elections shall be held and all appointments shall be
31 made no later than the thirtieth day of April preceding
32 the commencement of the term.

33 Each board of advisors shall hold a regular meeting
34 at least quarterly, commencing in July of each year.
35 Additional meetings may be held upon the call of the
36 chairman, president of the institution, or upon the
37 written request of at least four members. A majority of
38 the members shall constitute a quorum for conducting
39 the business of the board of advisors.

40 (b) One of the seven lay citizen members shall be
41 elected as chairman by the board of advisors in July of

42 each year: *Provided*, That no member shall serve as
43 chairman for more than two consecutive years at a time.

44 The president of the institution shall make available
45 resources of the institution for conducting the business
46 of the board of advisors. The members of the board of
47 advisors shall be reimbursed for all reasonable and
48 necessary expenses actually incurred in the perfor-
49 mance of their official duties under this section upon
50 presentation of an itemized sworn statement thereof. All
51 expenses incurred by the board of advisors and the
52 institution under this section shall be paid from funds
53 allocated to the institution for such purpose.

54 (c) The board of advisors shall review, prior to the
55 submission by the president to its governing board, all
56 proposals of the institution in the areas of mission,
57 academic programs, budget, capital facilities and such
58 other matters as requested by the president of the
59 institution or its governing board or otherwise assigned
60 to it by law. The board of advisors shall comment on
61 each such proposal in writing, with such recommenda-
62 tions for concurrence therein or revision or rejection
63 thereof as it deems proper. Such written comments and
64 recommendations shall accompany the proposal to the
65 governing board, and the governing board shall include
66 such comments and recommendations in its considera-
67 tion of and action on the proposal. The governing board
68 shall promptly acknowledge receipt of the comments
69 and recommendations and shall notify the board of
70 advisors in writing of any action taken thereon.

71 (d) Upon request therefor in writing by the president
72 of the institution, the board of advisors may authorize
73 transfers between items of allocation or appropriation in
74 accordance with the provisions of section nineteen-a,
75 article two, chapter five-a of this code.

76 (e) The board of advisors shall review, prior to their
77 implementation by the president, all proposals regard-
78 ing institution-wide personnel policies. The board of
79 advisors may comment on such proposals in writing.

80 (f) Upon the occurrence of a vacancy in the office of
81 president of the institution, the board of advisors shall

82 serve as a search and screening committee for candi-
83 dates to fill the vacancy under guidelines established by
84 its governing board. When serving as a search and
85 screening committee, the board of advisors and its
86 governing board are each authorized to appoint up to
87 three additional persons to serve on the committee as
88 long as the search and screening process is in effect. The
89 three additional appointees of the board of advisors shall
90 be faculty members of the institution. Only for the
91 purposes of the search and screening process, such
92 additional members shall possess the same powers and
93 rights as the regular members of the board of advisors,
94 including reimbursement for all reasonable and neces-
95 sary expenses actually incurred. Following the search
96 and screening process, the committee shall submit the
97 names of at least three candidates to the governing
98 board for consideration and appointment. If the govern-
99 ing board rejects all candidates so submitted, the
100 committee shall submit the names of at least three
101 additional candidates, and this process shall be repeated
102 until the governing board appoints one of the candidates
103 so submitted. The governing board shall provide all
104 necessary staff assistance to the board of advisors in its
105 role as a search and screening committee.

§18B-6-2. Advisory councils of faculty.

1 Effective the first day of July, one thousand nine
2 hundred eighty-nine, each governing board shall be
3 assisted by an advisory council of faculty.

4 During the month of April of each year, each pres-
5 ident or other administrative head of a state institution
6 of higher education, including Potomac State College of
7 West Virginia University and West Virginia University
8 at Parkersburg, at the direction of the councils and in
9 accordance with procedures established by the councils,
10 shall convene a meeting or otherwise institute a
11 balloting process to elect one faculty to serve on the
12 appropriate governing board's advisory council of
13 faculty, which shall consist of one faculty, so elected,
14 from each such institution under the appropriate
15 governing board. Terms of the members of each council
16 shall be for one year and shall begin on the first day

17 of May of each year, and members of each advisory
18 council shall be eligible to succeed themselves.

19 The advisory councils of faculty shall meet at least
20 once each quarter. One of the quarterly meetings shall
21 be during the month of June, at which meeting each
22 council shall elect a chairman, who shall be by virtue
23 of the office a voting member of the appropriate
24 governing board. No member may vote by proxy at such
25 election. In the event of a tie in the last vote taken for
26 such election, a member authorized by the council shall
27 select the chairman by lot from the names of those
28 persons tied. Immediately following the election of a
29 chairman, each council shall elect, in the manner
30 prescribed by this section for the election of a chairman,
31 a member of that council to preside over meetings of the
32 council in the chairman's absence. Should the chairman
33 vacate the position, the council shall meet and elect a
34 new chairman to fill the unexpired term within thirty
35 days following such vacancy.

36 Each advisory council of faculty, through its chairman
37 and in any other appropriate manner, shall consult and
38 advise its governing board in matters of higher educa-
39 tion in which the faculty members may have an interest.

40 Members of each advisory council shall serve without
41 compensation, but shall be entitled to reimbursement
42 for actual and necessary expenses incurred in the
43 performance of their official duties from funds allocated
44 to the state institution of higher education served.

45 Each governing board shall furnish secretarial
46 services to its advisory council of faculty, and each
47 advisory council shall cause to be prepared minutes of
48 its meetings, which minutes shall be available, upon
49 request, to any faculty member of a state institution of
50 higher education represented on the council. Such
51 minutes shall be forwarded to the advisory council of
52 faculty serving the other governing board.

§18B-6-3. Advisory councils of students.

1 Effective the first day of July, one thousand nine

2 hundred eighty-nine, each governing board shall be
3 assisted by an advisory council of students.

4 The student government organization at each state
5 institution of higher education shall elect a student, who
6 may be the elected head or president of such organiza-
7 tion, to serve on the appropriate governing board's
8 advisory council of students, which are hereby created,
9 consisting of the elected representatives of each institu-
10 tion under the appropriate governing board: *Provided*,
11 That the student government organization at each
12 institution in the university system, including Potomac
13 State College of West Virginia University and West
14 Virginia University at Parkersburg, shall elect one
15 student per three thousand students enrolled at each
16 institution with a minimum of one representative from
17 each institution. The student government of each
18 institution shall determine how its representatives shall
19 be elected. Terms of the members of such council shall
20 be for one year and shall begin on the first day of May
21 of each year, and members of the advisory councils shall
22 be eligible to succeed themselves.

23 Each institution shall have only one vote in all
24 matters. The advisory councils of students shall meet at
25 least once each quarter, and shall meet during each
26 month of June, at which meeting each council shall elect
27 a chairman, who prior to such elections must be entitled
28 to vote in the state of West Virginia. By virtue of the
29 office, the chairman shall be a voting member of the
30 appropriate governing board. No member may vote by
31 proxy at such election. In the event of a tie in the last
32 vote taken for such election, a member authorized by the
33 council shall select the chairman by lot from the names
34 of those persons tied. Immediately following the election
35 of a chairman, each council shall elect, in the manner
36 prescribed by this section for the election of a chairman,
37 a member of that council to preside over meetings of the
38 council in the chairman's absence. Should the chairman
39 vacate the position, the council shall meet and elect a
40 new chairman to fill the unexpired term within thirty
41 days following such vacancy.

42 Each advisory council of students, through its chair-
43 man and in any other appropriate manner, shall consult
44 and advise its governing board in matters of higher
45 education in which the students may have an interest.

46 Members of each advisory council shall serve without
47 compensation, but shall be entitled to reimbursement
48 for actual and necessary expenses incurred in the
49 performance of their official duties from funds allocated
50 to the state institution of higher education served.

51 Each governing board shall furnish secretarial
52 services to its advisory council of students, and each
53 advisory council shall cause to be prepared minutes of
54 its meetings, which minutes shall be available, upon
55 request, to any student of a state institution of higher
56 education represented on the council. Such minutes shall
57 be forwarded to the advisory council of students serving
58 the other governing board.

§18B-6-4. Advisory councils of classified employees.

1 Effective the first day of July, one thousand nine
2 hundred eighty-nine, each governing board shall be
3 assisted by an advisory council of classified employees.

4 During the month of April of each year, each pres-
5 ident or other administrative head of a state institution
6 of higher education, including Potomac State College of
7 West Virginia University and West Virginia University
8 at Parkersburg, at the direction of the councils and in
9 accordance with procedures established by the councils,
10 shall convene a meeting or otherwise institute a
11 balloting process to elect one classified employee to serve
12 on the appropriate governing board's advisory council of
13 classified employees, which shall consist of one classified
14 employee, so elected, from each such institution under
15 the appropriate governing board. Terms of the members
16 of such councils shall be for one year and shall begin
17 on the first day of May of each year, and members of
18 the advisory councils shall be eligible to succeed
19 themselves. For the purpose of this section the term
20 "institution of higher education" includes the facilities
21 and staff supervised by the senior administrator
22 employed by the governing boards, who shall be deemed
23 a part of the state college system, and the West Virginia

24 network for telecomputing, who shall be deemed a part
25 of the state university system.

26 Each advisory council of classified employees shall
27 meet at least once each quarter. One of the quarterly
28 meetings shall be during the month of June, at which
29 meeting each council shall elect a chairman, who shall
30 be by virtue of the office a voting member of the
31 appropriate governing board: *Provided*, That the board
32 of directors' advisory council for classified employees'
33 chairman shall not be a member of the staff supervised
34 by the central administrative official. No member may
35 vote by proxy at such election. In the event of a tie in
36 the last vote taken for such election, a member autho-
37 rized by the council shall select the chairman by lot
38 from the names of those persons tied. Immediately
39 following the election of a chairman, each council shall
40 elect, in the manner prescribed by this section for the
41 election of a chairman, a member of the council to
42 preside over meetings of the council in the chairman's
43 absence. Should the chairman vacate the position, the
44 council shall meet and elect a new chairman to fill the
45 unexpired term within thirty days following such
46 vacancy.

47 Each advisory council of classified employees, through
48 its chairman and in any other appropriate manner, shall
49 consult and advise its governing board in matters of
50 higher education in which the classified employees may
51 have an interest.

52 Members of each advisory council shall serve without
53 compensation, but shall be entitled to reimbursement
54 for actual and necessary expenses incurred in the
55 performance of their official duties from funds allocated
56 to the state institution of higher education served.

57 Each governing board shall furnish secretarial
58 services to its advisory council of classified employees,
59 and each advisory council shall cause to be prepared
60 minutes of its meetings, which minutes shall be
61 available, upon request, to any classified employee of a
62 state institution of higher education represented on the
63 council. Such minutes shall be forwarded to the advisory

64 council of classified employees serving the other
65 governing board.

§18B-6-5. Creation of advisory council on federal resources; appointment, terms and qualifications of members; vacancies; compensation and expenses; meetings; quorum.

1 There is hereby created an advisory council to be
2 known as the higher education advisory council on
3 federal resources. The council shall review the state plan
4 for administration of the federal Higher Education
5 Facilities Act of 1963 and Titles I and VI of the federal
6 Higher Education Act of 1965, as amended. The council
7 shall also evaluate proposals pertaining to the aforementioned federal acts and shall submit such recommendations as it deems appropriate to the secretary of education and the arts. The council shall be involved in
11 every significant function of the office of the secretary,
12 including governing boards under the jurisdiction of the
13 secretary, pertaining to said federal acts.

14 The advisory council shall consist of twelve members
15 to be appointed as follows: One member of the board of
16 trustees appointed by the president of the board of
17 trustees, one member of the board of directors appointed
18 by the president of the board of directors, two members
19 appointed by the board of trustees to represent the
20 public at large, two members appointed by the board
21 of directors to represent the public at large, two
22 members appointed by each governing board to represent
23 the state institutions of higher education under its
24 control, and one member appointed by each governing
25 board to represent private institutions of higher
26 education under its jurisdiction: *Provided*, That the two
27 members representing private institutions of higher
28 education shall be presidents of a private institution,
29 and, of the four members representing public institutions
30 of higher education, one appointed by each
31 governing board shall be a president of a state institution
32 of higher education. The secretary of education and
33 the arts shall appoint a chairman of the advisory council
34 who shall be selected from the representatives of the
35 public at large.

36 The members shall serve for a term of six years,
37 except that the original appointments shall be as
38 follows: Four members to serve two years, four
39 members to serve four years, and four members to serve
40 six years. Such appointments shall be made no later
41 than the first day of September, one thousand nine
42 hundred eighty-nine. The secretary of education and the
43 arts shall appoint a member to fill any vacancy, which
44 member shall serve for the unexpired term of the
45 vacating member. All shall be eligible for
46 reappointment.

47 The members of the advisory council shall serve
48 without compensation, but shall be reimbursed for their
49 necessary expenses actually incurred in the perfor-
50 mance of their official duties not to exceed twenty-five
51 dollars per day plus an allowance of twenty cents per
52 mile actually traveled to and from such meetings.

53 A meeting of the advisory council shall be held on or
54 before the first day of November, one thousand nine
55 hundred eighty-nine, and thereafter the advisory council
56 shall meet at least annually and at such other times as
57 necessary upon the call of the chairman. Five members
58 of the advisory council shall constitute a quorum, and
59 a majority vote of the quorum shall be necessary to pass
60 upon matters before the council.

**§18B-6-6. Powers and duties relating to anatomical gifts;
requisition of bodies; autopsies; transporta-
tion of bodies; expenses of preservation;
bond required; offenses and penalties.**

1 (a) The board of trustees may appoint one dean of a
2 school of medicine, one dean of a school of dentistry and
3 two chairmen of departments of anatomy of schools of
4 medicine, all of whom shall constitute a board for the
5 purpose of performing the duties of the board, which is
6 hereby abolished, formerly known as the "West Virginia
7 Anatomical Board." This new board shall be known as
8 the "University of West Virginia Anatomical Board,"
9 and shall hereinafter be referred to as the "board" for
10 the purposes of this section. No more than one member
11 of this board shall be from the same school.

12 The board shall have authority to appoint such

13 officers, employees and agents as may be necessary to
14 carry out the purposes for which the board is organized.
15 It shall keep a full and complete record of its transac-
16 tions, showing, among other things, every dead human
17 body coming under its authority, giving name, sex, age,
18 date of death, place from which received, and when and
19 from whom received, which record shall be open at all
20 times to the inspection of the attorney general and any
21 prosecuting attorney in the state.

22 If the board of trustees does not appoint a "university
23 of West Virginia anatomical board" as herein autho-
24 rized, then the board of trustees itself shall perform the
25 duties of the anatomical board as set forth herein.

26 (b) The board shall be responsible for making requi-
27 sition for, receiving, and making disposition of the dead
28 human bodies for the scientific uses and purposes of
29 reputable educational institutions, within the state and
30 elsewhere, having medical, osteopathy, dentistry or
31 nursing schools. The board shall have full power to
32 establish rules for its own government and for the
33 requisition, use, disposition and control of such bodies
34 as may come under its authority by way of gift,
35 pursuant to this section or pursuant to section four,
36 article nineteen, chapter sixteen of this code.

37 (c) All dead human bodies which may come under the
38 charge or control of any mortician, any officer or agent
39 of the department of welfare or of any county commis-
40 sion or municipality, or any superintendent, officer or
41 agent having the supervision of any prison, morgue,
42 hospital, or other public institution in this state, and
43 which may be required to be buried at public expense,
44 shall be subject to the requisition of the board as
45 provided in this section. No such body shall be delivered
46 to the board if any person related to the deceased by
47 blood or marriage shall make a statement in writing to
48 that effect, and shall claim such body for burial, or shall
49 make affidavit that the relative is unable to bear the
50 expense of burial and desires that the deceased be
51 buried at public expense. This statement and affidavit
52 may be filed by any such relative with the person having

53 charge and control of the body of the person so claimed,
54 either before or after the death of such person.

55 No autopsy shall be performed on any unclaimed body
56 without the written permission of the board, except
57 upon the proper order of a duly authorized law-
58 enforcement officer.

59 (d) It shall be the duty of any person who has charge
60 or control of any unclaimed body, subject to requisition
61 by the board, to give notice to the board of that fact by
62 telephone or telegraph within twenty-four hours after
63 such body comes under that person's control. Thereafter,
64 such person shall hold the body subject to the order of
65 the board for at least twenty-four hours after the
66 sending of such notice. If the board makes requisition
67 for the body within the twenty-four hour period, it shall
68 be delivered, pursuant to the order of the board, to the
69 board or its authorized agent for transportation to any
70 educational institution which the board deems to be in
71 bona fide need thereof and able to adequately control,
72 use and dispose of the body. The board shall make
73 suitable arrangements for the transportation of any
74 body, or part or parts thereof, which may come under
75 its authority to such educational institution. All ex-
76 penses incurred in connection with the preservation,
77 delivery and transportation of any such body delivered
78 pursuant to the order of the board shall be paid by the
79 educational institution receiving the body.

80 (e) No dead body shall be received or requisitioned by
81 the board until the members of the board have filed a
82 bond with the clerk of the circuit court of Kanawha
83 County in a penalty of one thousand dollars, with good
84 security, signed by a responsible person or persons, or
85 by some surety company authorized to do business in
86 this state, or have proved to such clerk that they are
87 covered by a suitable bond in at least that amount,
88 conditioned for the faithful performance of their duties.

89 (f) Any person who shall neglect, refuse or fail to
90 perform any duty required by this section relating to the
91 board shall be guilty of a misdemeanor, and, upon
92 conviction thereof, shall be punished by a fine of not

93 more than one hundred dollars or by imprisonment in
94 the county jail for not more than ten days, or by both
95 such fine and imprisonment. Any person who fails to
96 give the required notice that that person has charge of
97 an unclaimed body subject to requisition by the board
98 shall also be personally liable for all burial expenses, if
99 such body was buried at public expense, to the public
100 agency that paid for the burial.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.

§18B-7-2. Authority to grant sabbatical leaves.

§18B-7-3. Effect of leave of absence on academic tenure, rank, etc.

§18B-7-4. Notice to probationary faculty members of retention or nonretention; hearing.

§18B-7-5. Faculty and classified employee continuing education and development program.

§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.

1 (a) All decisions by the appropriate governing board
2 or their agents at state institutions of higher education
3 concerning reductions in work force of full-time
4 classified personnel, whether by temporary furlough or
5 permanent termination, shall be made in accordance
6 with this section. Definitions for terms used in this
7 section shall be in accordance with those provided in
8 section two, article nine of this chapter except that the
9 provisions of this section shall apply only to classified
10 employees whose employment, if continued, shall
11 accumulate to a minimum total of one thousand forty
12 hours during a calendar year and extend over at least
13 nine months of a calendar year.

14 (b) For layoffs by classification for reason of lack of
15 funds or work, or abolition of position or material
16 changes in duties or organization and for recall of
17 employees so laid off, consideration shall be given to an
18 employee's seniority as measured by permanent employ-
19 ment in the service of the state system of higher

20 education. In the event that the institution wishes to lay
21 off a more senior employee, the institution must
22 demonstrate that the senior employee cannot perform
23 any other job duties held by less senior employees of that
24 institution in the same job class, or any other equivalent
25 or lower job class for which the senior employee is
26 qualified: *Provided*, That if an employee refuses to
27 accept a position in a lower job class, such employee
28 shall retain all rights of recall hereinafter provided. If
29 two or more employees accumulate identical seniority,
30 the priority shall be determined by a random selection
31 system established by the employees and approved by
32 the institution.

33 (c) Any employee laid off during a furlough or
34 reduction in work force shall be placed upon a preferred
35 recall list and shall be recalled to employment by the
36 institution on the basis of seniority. An employee's
37 listing with an institution shall remain active for a
38 period of one calendar year from the date of termination
39 or furlough, or from the date of the most recent renewal.
40 If an employee fails to renew the listing with the
41 institution, the employee's name may be removed from
42 the list. An employee placed upon the preferred list shall
43 be recalled to any position opening by the institution
44 within the classification(s) in which the employee had
45 previously been employed or to any lateral position for
46 which the employee is qualified. An employee on the
47 preferred recall list shall not forfeit the right to recall
48 by the institution if compelling reasons require such
49 employee to refuse an offer of reemployment by the
50 institution.

51 The institution shall be required to notify all em-
52 ployees maintaining active listings on the preferred
53 recall list of all position openings that from time to time
54 exist. Such notice shall be sent by certified mail to the
55 last known address of the employee. It shall be the duty
56 of each employee listed to notify the institution of any
57 change in address and to timely renew the listing with
58 the institution. No position openings shall be filled by
59 the institution, whether temporary or permanent, until
60 all employees on the preferred recall list have been

- 61 properly notified of existing vacancies and have been
62 given an opportunity to accept reemployment.

§18B-7-2. Authority to grant sabbatical leaves.

1 The appropriate governing board shall have authority
2 to grant sabbatical leaves to faculty members at state
3 institutions of higher education for the purpose of
4 permitting them to engage in graduate study, research
5 or other activities calculated to improve their teaching
6 ability. Such leaves shall be granted only in accordance
7 with a uniform plan adopted by each governing board
8 and shall be subject to such reasonable rules as each
9 governing board may prescribe. Any plan adopted by a
10 governing board shall not provide for the granting of
11 sabbatical leave to any faculty member who has served
12 fewer than six years at the institution where presently
13 employed, nor shall such leave be for more than one half
14 the contract period at full pay or a full contract period
15 at half pay. Any faculty member receiving a sabbatical
16 leave shall be required to return and serve for at least
17 one year at the institution from which the leave was
18 granted or to repay to the institution the compensation
19 received during such leave. Any faculty member
20 returning from leave shall be reinstated at the academic
21 rank held prior to such sabbatical unless promoted to
22 a higher rank and shall be entitled to such salary and
23 any increases thereto appropriate to the rank and years
24 of experience of such faculty member. Compensation to
25 a faculty member on sabbatical leave shall be paid from
26 the regular personal services appropriations of the
27 institution where employed.

**§18B-7-3. Effect of leave of absence on academic tenure,
rank, etc.**

1 Any other provision of law to the contrary notwith-
2 standing any tenured professional at any state institu-
3 tion of higher education who shall, with the consent of
4 the president or other administrative head of the state
5 institution by which the professional is employed, be
6 absent from duties at such institution to accept employ-
7 ment in any nonelected governmental capacity shall be
8 afforded such benefits of academic tenure, rank and

9 position as if such person had remained continuously in
10 the position retained and held at such institutions of
11 higher education immediately preceding any such
12 absence: *Provided*, That such leave of absence shall not
13 exceed two years: *Provided, however*, That tenure and
14 rank may be retained during an absence of more than
15 two years if the president of the institution from which
16 such person is on leave of absence submits in writing
17 during each of such years a request for such retention
18 to the appropriate governing board, and such board
19 approves the request for each such year: *Provided*
20 *further*, That any individual who remains in governmen-
21 tal employment with leave granted in accordance with
22 this section shall forfeit all rights to academic tenure,
23 rank and position formerly held at such institution after
24 the eighth year of such employment.

§18B-7-4. Notice to probationary faculty members of retention or nonretention; hearing.

1 (a) The president or other administrative head of each
2 state institution of higher education shall give written
3 notice to probationary faculty members concerning their
4 retention or nonretention for the ensuing academic year
5 (1) not later than the first day of March for those
6 probationary faculty members who are in their first
7 academic year of service; (2) not later than the fifteenth
8 day of December for those probationary faculty
9 members who are in their second academic year of
10 service; and (3) at least one year before the expiration
11 of an appointment for those probationary faculty
12 members who have been employed two or more years
13 with the institution. Such notice to those probationary
14 faculty members not being retained shall be by certified
15 mail, return receipt requested.

16 (b) Upon request of the probationary faculty member
17 not retained, the president or other administrative head
18 of the institution shall within ten days, and by certified
19 mail, inform the probationary faculty member of the
20 reasons for nonretention. Any probationary faculty
21 member who desires to appeal the decision may request
22 a hearing from the appropriate governing board within
23 ten days after receiving the statement of reasons. The

24 appropriate governing board shall publish appropriate
25 rules to govern the conduct of the appeal herein allowed.
26 Such board shall, by its rules, prescribe either an
27 unbiased committee of that board or appoint a hearing
28 examiner to hear such appeals. Such hearing shall be
29 held at the employing institution and within thirty days
30 of the request. The rules of evidence shall not strictly
31 apply. The faculty member shall be accorded substan-
32 tive and procedural due process, including the right to
33 produce evidence and witnesses and to cross-examine
34 witnesses, and to be represented by counsel or other
35 representative of that faculty member's choice. If the
36 committee of the board or the hearing examiner shall
37 conclude that the reasons for nonretention are arbitrary
38 or capricious or without a factual basis, the faculty
39 member shall be retained for the ensuing academic
40 year. The decision shall be rendered within thirty days
41 after conclusion of the hearing.

42 (c) The term "probationary faculty member" shall be
43 defined according to rules promulgated by the govern-
44 ing boards. The rights herein provided to probationary
45 faculty members are in addition to, and not in lieu of,
46 other rights afforded them by other rules and other
47 provisions of law.

**§18B-7-5. Faculty and classified employee continuing
education and development program.**

1 Each state institution of higher education shall have
2 the authority to establish and operate a faculty and
3 classified employee continuing education and develop-
4 ment program under rules adopted by the appropriate
5 governing board. Funds allocated or made available
6 may be used to compensate and pay expenses for faculty
7 or classified employees who are pursuing additional
8 academic study or training to better equip themselves
9 for their duties at the state institutions of higher
10 education.

11 Rules for this activity may include reasonable provi-
12 sions for the continuation or return of any faculty or
13 classified employee receiving the benefits of such
14 education or training, or for reimbursement by the state

15 for expenditures incurred on behalf of such faculty or
16 classified employee.

ARTICLE 8. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.

§18B-8-1. Definitions.

§18B-8-2. Higher education minimum salary schedule.

§18B-8-3. Assignment to salary schedule; actual salary.

§18B-8-4. Hirings after July 1, 1989.

§18B-8-5. Merit increases and salary adjustment.

§18B-8-6. Additional employment by mutual agreement.

§18B-8-1. Definitions.

1 As used in this article:

2 (a) "Schedule" or "salary schedule" means the grid of
3 minimum salary figures listed in section two of this
4 article;

5 (b) "Academic rank" means the position held by a
6 faculty member as determined by the president,
7 consistent with policy established by the governing
8 board, and includes the positions of professor, associate
9 professor, assistant professor and instructor; all other
10 ranks are excluded from the provisions of this article;

11 (c) "Years of experience" means the actual number of
12 years a person has been a full-time faculty member at
13 an institution of higher education within this state.
14 Employment for nine months shall equal one year of
15 experience, but no faculty member may accrue more
16 than one year of experience during any given academic
17 year. Employment for less than full time, or less than
18 nine months during any fiscal year, shall be prorated.
19 In accordance with rules established by the governing
20 boards, a faculty member may be granted additional
21 years of experience for actual years of work or teaching
22 experience at institutions other than institutions of
23 higher education within this state;

24 (d) "Doctoral institutions" means West Virginia
25 University and Marshall University at Huntington.
26 Doctoral programs at Marshall University shall be
27 selective and nonduplicative of West Virginia Univer-
28 sity unless an exception is recommended by both

29 institutions and approved by the board of trustees.
30 "Master's II institutions" means West Virginia School of
31 Osteopathic Medicine and the University of West
32 Virginia College of Graduate Studies; "baccalaureate
33 and two-year institutions" means Bluefield State
34 College, Concord College, Fairmont State College,
35 Glenville State College, Shepherd College, West Liberty
36 State College, West Virginia Institute of Technology,
37 West Virginia State College, West Virginia University
38 at Parkersburg, Southern West Virginia Community
39 College, West Virginia Northern Community College
40 and Potomac State College of West Virginia University
41 and such other institutions as are designated community
42 colleges by the board of directors;

43 (e) "Salary" means the total nine-month or ten-month
44 salary paid from state funds to a full-time faculty
45 member, or if other than nine or ten months, adjusted
46 to a nine-month base salary;

47 (f) "Full-time faculty" means any faculty member
48 designated as such by the president, consistent with
49 approved policy of the appropriate governing board, and
50 those persons with faculty rank who have research or
51 administrative responsibilities;

52 (g) "Fiscal year" means twelve calendar months and
53 begins on the first day of July and ends on the thirtieth
54 day of June; and

55 (h) "Merit increases and salary adjustments" means
56 the amount of additional salary increase allowed on a
57 merit basis or to rectify salary inequities or accommo-
58 date competitive market conditions, in accordance with
59 policy established by the appropriate governing board.

§18B-8-2. Higher education minimum salary schedule.

1 There is hereby established a state minimum salary
2 schedule for full-time faculty employed by a governing
3 board consisting of a minimum salary for each academic
4 rank in accordance with years of experience: *Provided,*
5 That it is the intention of the Legislature to create a
6 schedule of minimum salary goals in higher education
7 subject to the availability of funds; and with the

8 exception of the placement of all full-time faculty
 9 members included under the provisions of this article on
 10 the schedule at zero years of experience, nothing in this
 11 article shall be construed to guarantee payment to any
 12 faculty member of the salary indicated on the approp-
 13 riate schedule at the actual years of experience.

**MINIMUM SALARY SCHEDULE FOR FULL-TIME
 FACULTY AT BACCALAUREATE AND
 TWO-YEAR INSTITUTIONS**

	Years of Experience	Instructor	Assistant Professor	Associate Professor	Professor
14	0	14,719	18,042	20,416	24,310
15	1	15,087	18,493	20,926	24,918
16	2	15,464	18,955	21,449	25,541
17	3	15,851	19,429	21,985	26,180
18	4	16,247	19,915	22,535	26,835
19	5	16,653	20,413	23,098	27,506
20	6	17,069	20,923	23,675	28,194
21	7	17,496	21,446	24,267	28,899
22	8	17,933	21,982	24,874	29,621
23	9	18,381	22,532	25,496	30,362
24	10	18,841	23,095	26,133	31,121
25	11		23,672	26,786	31,899
26	12		24,264	27,456	32,696
27	13		24,871	28,142	33,513
28	14		25,493	28,846	34,351
29	15		26,130	29,567	35,210
30	16			30,306	36,090
31	17			31,064	36,992
32	18			31,841	37,917
33	19			32,637	38,865
34	20			33,453	39,837

**MINIMUM SALARY SCHEDULE FOR FULL-TIME
 FACULTY AT MASTER'S II INSTITUTIONS
 (WEST VIRGINIA SCHOOL OF
 OSTEOPATHIC MEDICINE
 AND THE WEST VIRGINIA COLLEGE
 OF GRADUATE STUDIES)**

	Years of Experience	Instructor	Assistant Professor	Associate Professor	Professor
35	0	14,719	18,517	23,815	26,203

36	1	15,087	18,980	24,410	26,858
37	2	15,464	19,455	25,020	27,529
38	3	15,851	19,941	25,646	28,217
39	4	16,247	20,440	26,287	28,922
40	5	16,653	20,951	26,944	29,645
41	6	17,069	21,475	27,618	30,386
42	7	17,496	22,012	28,308	31,146
43	8	17,933	22,562	29,016	31,925
44	9	18,381	23,126	29,741	32,723
45	10	18,841	23,704	30,485	33,541
46	11		24,297	31,247	34,380
47	12		24,904	32,028	35,240
48	13		25,527	32,829	36,121
49	14		26,165	33,650	37,024
50	15		26,819	34,491	37,950
51	16			35,353	38,899
52	17			36,237	39,871
53	18			37,143	40,868
54	19			38,072	41,890
55	20			39,024	42,937

**MINIMUM SALARY SCHEDULE FOR
FULL-TIME FACULTY AT
DOCTORAL INSTITUTIONS
(WEST VIRGINIA UNIVERSITY AND
MARSHALL UNIVERSITY)**

	Years of Experience	Instructor	Assistant Professor	Associate Professor	Professor
56	0	17,092	19,466	25,458	28,285
57	1	17,519	19,953	26,094	28,992
58	2	17,957	20,452	26,746	29,717
59	3	18,406	20,963	27,415	30,460
60	4	18,866	21,487	28,100	31,222
61	5	19,338	22,024	28,803	32,003
62	6	19,821	22,575	29,523	32,803
63	7	20,317	23,139	30,261	33,623
64	8	20,825	23,717	31,018	34,464
65	9	21,346	24,310	31,793	35,326
66	10	21,880	24,918	32,588	36,209
67	11		25,541	33,403	37,114
68	12		26,180	34,238	38,042
69	13		26,835	35,094	38,993

70	14	27,506	35,971	39,968
71	15	28,194	36,870	40,967
72	16		37,792	41,991
73	17		38,737	43,041
74	18		39,705	44,117
75	19		40,698	45,220
76	20		41,715	46,351

§18B-8-3. Assignment to salary schedule; actual salary.

1 (a) On or before the first day of July of each year, each
 2 faculty member then employed shall be given notice by
 3 the appropriate governing board of the placement on the
 4 minimum salary schedule which is appropriate to such
 5 faculty member's years of experience and to which such
 6 individual has been assigned, notwithstanding the
 7 actual salary paid under the provisions of this article.

8 (b) Each full-time faculty member employed as of the
 9 effective date of this section shall receive for full-time
 10 employment at the same academic rank during the
 11 academic year one thousand nine hundred eighty-nine—
 12 ninety, and thereafter, a salary which is no less than the
 13 salary being paid such faculty member for the academic
 14 year one thousand nine hundred eighty-eight—eighty-
 15 nine. No full-time faculty member shall receive a salary
 16 which is less than the salary for zero years of experience
 17 for the appropriate academic rank as set forth in section
 18 two of this article.

19 (c) Effective the first day of January, one thousand
 20 nine hundred ninety, an amount equal to five percent
 21 of one-half the amount appropriated and distributed in
 22 the fiscal year beginning on the first day of July, one
 23 thousand nine hundred eighty-nine, for salaries for full-
 24 time faculty members shall be distributed in the
 25 following manner: Such amount as may be necessary
 26 shall be distributed to each faculty member who is
 27 employed on the first day of January, one thousand nine
 28 hundred ninety, so that each such employee shall receive
 29 for the same employment at the same academic rank a
 30 salary which is at least equal to the salary being paid
 31 such faculty member during the fiscal year one thou-
 32 sand nine hundred eighty-eight—eighty-nine, and a

33 salary increase equal to two and one-half percent of such
34 salary. The Legislature may by general appropriation,
35 or the secretary of the department of education and the
36 arts may allocate through authority set forth under the
37 provisions of chapter five-f of this code, funds to be
38 distributed for the purpose of accommodating market
39 and equity conditions within the system. Any remaining
40 funds shall be applied in accordance with the provisions
41 of subsection (d) of this section.

42 (d) Funds remaining after meeting the salary of each
43 full-time faculty member in accordance with subsections
44 (b) and (c) of this section shall be used to pay that
45 amount that is the difference between such salary and
46 the appropriate salary for each full-time faculty
47 member's appropriate placement on the schedule:
48 *Provided*, That such amount may be reduced proportion-
49 ately based upon the amount of funds available for such
50 purpose: *Provided, however*, That in the case of Marshall
51 University, the difference between the salary paid a full-
52 time faculty member and the appropriate salary for the
53 faculty member's appropriate placement on the salary
54 schedule shall, for fiscal year one thousand nine hundred
55 eighty-nine—ninety, be calculated using the minimum
56 salary schedule for full-time faculty at master's II
57 institutions set forth in section two of this article.

58 (e) The salary of any full-time faculty member shall
59 not be reduced by the provisions of this article.

60 (f) Upon promotion in rank, placement on the min-
61 imum salary schedule shall be such as to provide a
62 salary increase of at least ten percent, and shall be at
63 least the amount prescribed for the appropriate aca-
64 demic rank to which promoted at zero years of expe-
65 rience.

§18B-8-4. Hirings after July 1, 1989.

1 Any person hired as a full-time faculty member after
2 the effective date of this section shall be assigned a
3 placement on the minimum salary schedule which is
4 appropriate to such person's academic rank and years
5 of experience, and such person shall have a salary of at
6 least zero years of experience at the appropriate

- 7 academic rank, and such proportionate increases as are
- 8 or may be made from funds available for such purpose
- 9 in accordance with the provisions of this article.

§18B-8-5. Merit increases and salary adjustment.

- 1 Nothing in this article shall be construed to prohibit
- 2 merit increases or salary adjustments that rectify
- 3 inequities or accommodate competitive market condi-
- 4 tions in specific areas of specialty, including inequities
- 5 within the rank of full professors at doctoral and
- 6 master's level institutions: *Provided*, That funds for such
- 7 increases and/or adjustments shall be distributed in
- 8 accordance with rules of the appropriate governing
- 9 board and shall be available to all state institutions of
- 10 higher education on an equitable basis.

§18B-8-6. Additional employment by mutual agreement.

- 1 Any employment for greater than a nine-month
- 2 period, or any responsibilities in excess of full-time
- 3 duties, shall be only by mutual agreement of the
- 4 employee and the institutional president or other
- 5 administrative head, or the designated representative,
- 6 in accordance with rules of the appropriate governing
- 7 board. The terms and conditions of any such agreement
- 8 shall be in writing, signed by both parties, and shall
- 9 state the maximum number of additional employment
- 10 days or credit hours or their equivalent to be worked
- 11 and the amount of compensation to be paid.

**ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND
CLASSIFICATION SYSTEM.**

§18B-9-1. Legislative purpose.

§18B-9-2. Definitions.

§18B-9-3. Higher education classified employee monthly salary schedule.

§18B-9-4. Establishment of personnel classification system; assignment to classification and to salary schedule.

§18B-9-5. Classified employee salary.

§18B-9-6. Annual review of classifications and classification system; notice and reports required.

§18B-9-7. Conferences regarding personnel classification.

§18B-9-8. Hirings after effective date.

§18B-9-9. Additional employment by mutual agreement; provision for governing board approval.

§18B-9-1. Legislative purpose.

- 1 The purpose of the Legislature in the enactment of
- 2 this article is to require the governing boards to

- 3 establish, control, supervise and manage a complete,
- 4 uniform system of personnel classification in accordance
- 5 with the provisions of this article for all employees other
- 6 than faculty and nonclassified employees at state
- 7 institutions of higher education.

§18B-9-2. Definitions.

- 1 As used in this article:

- 2 (a) "Classified employee or employee" means any
- 3 regular full-time or regular part-time employee of a
- 4 governing board, including all employees of the West
- 5 Virginia network for educational telecomputing and
- 6 beginning the first day of July, one thousand nine
- 7 hundred ninety, includes employees at the central office
- 8 of the governing boards, who hold a position that is
- 9 assigned a particular job title and pay grade in
- 10 accordance with the personnel classification system
- 11 established by the appropriate governing board and
- 12 shall include all employees of the West Virginia network
- 13 for educational telecomputing;

- 14 (b) "Nonclassified employee" means an individual who
- 15 is responsible for policy formation at the institutional
- 16 level or reports directly to the president: *Provided*, That
- 17 the percentage of personnel placed in the category of
- 18 "nonclassified" at any given institution shall not exceed
- 19 four percent of the total number of employees of that
- 20 institution who are eligible for membership in any state
- 21 retirement system of the state of West Virginia or other
- 22 retirement plan authorized by the state. Final approval
- 23 of such placement shall be with the appropriate
- 24 governing board;

- 25 (c) "Job description" means the specific listing of
- 26 duties and responsibilities as determined by the approp-
- 27 riate governing board and associated with a particular
- 28 job title;

- 29 (d) "Job title" means the name of the position or job
- 30 as defined by the appropriate governing board;

- 31 (e) "Job classification" means a grouping of job titles
- 32 with the same name without regard to their numerical

33 designations, or any job title for which there is no
34 related title of the same name;

35 (f) "Grade of classification" means a job title or
36 position with its numerical designation which distin-
37 guishes it from other titles in the same classification;

38 (g) "Merit increases and salary adjustments" means
39 the amount of additional salary increase allowed on a
40 merit basis or to rectify salary inequities or accommo-
41 date competitive market conditions in accordance with
42 rules established by the appropriate governing board;

43 (h) "Pay grade" means the letter grade assigned by
44 the appropriate governing board to a particular job title
45 and refers to the horizontal column heading of the salary
46 schedule established in section three of this article;

47 (i) "Personnel classification system" means the pro-
48 cess of job categorization adopted by the appropriate
49 governing board by which job title, job description, pay
50 grade and placement on the salary schedule are
51 determined;

52 (j) "Salary" means the amount of compensation paid
53 through the state treasury per month to a classified
54 employee;

55 (k) "Schedule" or "salary schedule" means the grid of
56 monthly salary figures established in section three of
57 this article; and

58 (l) "Years of experience" means the number of years
59 a person has been an employee of the state of West
60 Virginia and refers to the vertical column heading of the
61 salary schedule established in section three of this
62 article. For the purpose of placement on the salary
63 schedule pursuant to said section three, employment for
64 nine months or more shall equal one year of experience,
65 but no classified employee may accrue more than one
66 year of experience during any given fiscal year.
67 Employment for less than full time or less than nine
68 months during any fiscal year shall be prorated. For the
69 purpose of determining the amount of annual salary
70 increase pursuant to subsection (b) of section five of this
71 article, employment for less than twelve months during
72 any fiscal year shall be prorated. In accordance with

73 rules established by the appropriate governing board, a
 74 classified employee may be granted additional years of
 75 experience not to exceed the actual number of years of
 76 prior, relevant work or experience at accredited
 77 institutions of higher education other than state institu-
 78 tions of higher education.

§18B-9-3. Higher education classified employee monthly salary schedule.

1 There is hereby established a state monthly salary
 2 schedule for classified employees consisting of a
 3 minimum monthly salary for each pay grade in accor-
 4 dance with years of experience: *Provided*, That payment
 5 of the minimum salary shall be subject to the availabil-
 6 ity of funds, and nothing in this article shall be
 7 construed to guarantee payment to any classified
 8 employee of the salary indicated on the schedule at the
 9 actual years of experience. The minimum salary herein
 10 indicated shall be prorated for regular part-time
 11 classified employees.

**HIGHER EDUCATION CLASSIFIED
 EMPLOYEE MONTHLY SALARY SCHEDULE
 PAY GRADE**

	Years of Experi- ence	A	B	C	D	E	F	G	H	I
12	0	861	921	985	1,054	1,127	1,206	1,294	1,393	1,504
13	1	881	941	1,005	1,074	1,147	1,226	1,334	1,433	1,544
14	2	901	961	1,025	1,094	1,167	1,246	1,374	1,473	1,584
15	3	921	981	1,045	1,114	1,187	1,266	1,414	1,513	1,624
16	4	941	1,001	1,065	1,134	1,207	1,286	1,454	1,553	1,664
17	5	961	1,021	1,085	1,154	1,227	1,306	1,494	1,593	1,704
18	6	981	1,041	1,105	1,174	1,247	1,326	1,534	1,633	1,744
19	7	1,001	1,061	1,125	1,194	1,267	1,346	1,574	1,673	1,784
20	8	1,021	1,081	1,145	1,214	1,287	1,366	1,614	1,713	1,824
21	9	1,041	1,101	1,165	1,234	1,307	1,386	1,654	1,753	1,864
22	10	1,066	1,126	1,190	1,259	1,332	1,411	1,704	1,803	1,914
23	11	1,091	1,151	1,215	1,284	1,357	1,436	1,754	1,853	1,964
24	12	1,116	1,176	1,240	1,309	1,382	1,461	1,804	1,903	2,014
25	13	1,141	1,201	1,265	1,334	1,407	1,486	1,854	1,953	2,064
26	14	1,166	1,226	1,290	1,359	1,432	1,511	1,904	2,003	2,114
27	15	1,191	1,251	1,315	1,384	1,457	1,536	1,954	2,053	2,164
28	16	1,216	1,276	1,340	1,409	1,482	1,561	2,004	2,103	2,214
29	17	1,241	1,301	1,365	1,434	1,507	1,586	2,054	2,153	2,264

30	18	1,266	1,326	1,390	1,459	1,532	1,611	2,104	2,203	2,314
31	19	1,291	1,351	1,415	1,484	1,557	1,636	2,154	2,253	2,364
32	20	1,316	1,376	1,440	1,509	1,582	1,661	2,204	2,303	2,414

**HIGHER EDUCATION CLASSIFIED
EMPLOYEE MONTHLY SALARY SCHEDULE
PAY GRADE**

Years of Experi- ence		J	K	L	M	N	O	P	Q	R
33	0	1,629	1,770	1,929	2,109	2,312	2,543	2,805	3,103	3,443
34	1	1,669	1,810	1,969	2,169	2,372	2,603	2,865	3,163	3,503
35	2	1,709	1,850	2,009	2,229	2,432	2,663	2,925	3,223	3,563
36	3	1,749	1,890	2,049	2,289	2,492	2,723	2,985	3,283	3,623
37	4	1,789	1,930	2,089	2,349	2,552	2,783	3,045	3,343	3,683
38	5	1,829	1,970	2,129	2,409	2,612	2,843	3,105	3,403	3,743
39	6	1,869	2,010	2,169	2,469	2,672	2,903	3,165	3,463	3,803
40	7	1,909	2,050	2,209	2,529	2,732	2,963	3,225	3,523	3,863
41	8	1,949	2,090	2,249	2,589	2,792	3,023	3,285	3,583	3,923
42	9	1,989	2,130	2,289	2,649	2,852	3,083	3,345	3,643	3,983
43	10	2,039	2,180	2,339	2,724	2,927	3,158	3,420	3,718	4,058
44	11	2,089	2,230	2,389	2,799	3,002	3,233	3,495	3,793	4,133
45	12	2,139	2,280	2,439	2,874	3,077	3,308	3,570	3,868	4,208
46	13	2,189	2,330	2,489	2,949	3,152	3,383	3,645	3,943	4,283
47	14	2,239	2,380	2,539	3,024	3,227	3,458	3,720	4,018	4,358
48	15	2,289	2,430	2,589	3,099	3,302	3,533	3,795	4,093	4,433
49	16	2,339	2,480	2,639	3,174	3,377	3,608	3,870	4,168	4,508
50	17	2,389	2,530	2,689	3,249	3,452	3,683	3,945	4,243	4,583
51	18	2,439	2,580	2,739	3,324	3,527	3,758	4,020	4,318	4,658
52	19	2,489	2,630	2,789	3,399	3,602	3,833	4,095	4,393	4,733
53	20	2,539	2,680	2,839	3,474	3,677	3,908	4,170	4,468	4,808

§18B-9-4. Establishment of personnel classification system; assignment to classification and to salary schedule.

1 Before the first day of July, one thousand nine
 2 hundred ninety, the governing boards shall establish by
 3 rule and implement an equitable system of job classi-
 4 fications, each classification to consist of related job
 5 titles and corresponding job descriptions for each
 6 position within a classification, together with the
 7 designation of an appropriate pay grade for each job
 8 title, which system shall be the same for corresponding
 9 positions in institutions under both boards. The system
 10 of job classifications shall be submitted to the secretary

11 of education and the arts for review and approval prior
12 to implementation on said date.

13 By such date and with consideration to recommenda-
14 tions of the institutions, the appropriate governing
15 board shall furnish each classified employee written
16 confirmation of the assignment to the appropriate
17 classification, job title and pay grade and of the proper
18 placement on the salary schedule pursuant to section
19 three of this article notwithstanding the actual salary
20 paid. Such assignment may be appealed in accordance
21 with article twenty-nine of chapter eighteen of this code:
22 *Provided*, That nothing herein shall nullify or void any
23 personnel classification system in effect immediately
24 prior to the first day of July, one thousand nine hundred
25 eighty-nine.

§18B-9-5. Classified employee salary.

1 (a) Each classified employee who is employed by a
2 governing board on the first day of July, one thousand
3 nine hundred eighty-nine, shall receive for the same
4 employment at the same pay grade during the fiscal
5 year commencing on such date and thereafter, a
6 monthly salary which is at least equal to the final
7 monthly salary paid such classified employee for the
8 fiscal year commencing on the first day of July, one
9 thousand nine hundred eighty-eight, to be paid in equal
10 installments within the regular pay periods.

11 (b) Commencing with the fiscal year beginning on the
12 first day of July, one thousand nine hundred eighty-nine,
13 and each fiscal year thereafter, each classified employee
14 with three or more years of experience shall receive an
15 annual salary increase equal to thirty-six dollars times
16 the employee's years of experience, less any incremental
17 salary increase granted in a prior fiscal year and
18 actually incorporated into and becoming an integral
19 part of base salary prior to fiscal year one thousand nine
20 hundred ninety: *Provided*, That such annual salary
21 increase shall not exceed the amount granted for the
22 maximum of twenty years of experience. These incre-
23 mental increases shall be in lieu of any salary increase
24 received pursuant to section two, article five, chapter

25 five of this code; shall be in addition to any across-the-
26 board, cost-of-living or percentage salary increases
27 which may be granted in any fiscal year by the
28 Legislature; and shall be paid in equal installments
29 within the regular pay periods.

30 (c) Each classified employee whose monthly salary
31 under subsections (a) and (b) of this section is less than
32 the minimum monthly salary for zero years of expe-
33 rience for the appropriate pay grade as set forth in
34 section three of this article shall receive additional
35 compensation such that the monthly salary is at least the
36 minimum amount prescribed for the appropriate pay
37 grade at zero years of experience: *Provided*, That such
38 amounts may be reduced proportionately based upon the
39 amount of funds available for such purpose.

40 (d) Any funds remaining after increasing the monthly
41 salary of each classified employee to at least the
42 minimum amount prescribed for the appropriate pay
43 grade at zero years of experience shall be used to place
44 classified employees on the salary schedule at their
45 appropriate years of experience: *Provided*, That such
46 amount may be reduced proportionately based upon the
47 amount of funds available for such purpose.

48 (e) Any classified employee may receive merit in-
49 creases and/or salary adjustments in accordance with
50 policies established by the board: *Provided*, That funds
51 for such increases and/or adjustments shall be distrib-
52 uted in accordance with rules of the appropriate
53 governing board and shall be available to all state
54 institutions of higher education on an equitable basis.

55 (f) The current monthly salary of any classified
56 employee may not be reduced by the provisions of this
57 article nor by any other action inconsistent with the
58 provisions of this article, and nothing in this article shall
59 be construed to prohibit promotion of any classified
60 employee to a job title carrying a higher pay grade if
61 such promotion is in accordance with the provisions of
62 this article and the personnel classification system
63 established by the appropriate governing board.

64 (g) Effective the first day of January, one thousand

65 nine hundred ninety, an amount equal to five percent
66 of one half the amount appropriated and distributed in
67 the fiscal year beginning on the first day of July, one
68 thousand nine hundred eighty-nine, for salaries for full-
69 time classified employees shall be distributed in the
70 following manner: Such amount as may be necessary
71 shall be distributed to each classified employee who is
72 employed on the first day of January, one thousand nine
73 hundred ninety, so that each such employee shall receive
74 for the same employment at the same pay grade a
75 monthly salary which is at least equal to the final
76 monthly salary paid such classified employee for the last
77 month of such employee's employment during the fiscal
78 year one thousand nine hundred eighty-eight—eighty-
79 nine, and a salary increase equal to two and one-half
80 percent of such final monthly salary. Any remaining
81 funds shall be applied in accordance with the provisions
82 of this section.

§18B-9-6. Annual review of classifications and classification system; notice and reports required.

1 Each institution shall review annually each job
2 description in relationship to the assigned duties and
3 responsibilities, current job title and pay grade of each
4 classified employee of that institution. Based upon the
5 data collected through such review, each institution
6 shall determine which, if any, of its classified employees
7 should be recommended for a change in job title in order
8 to conform to the personnel classification system of its
9 governing board: *Provided*, That any classified employee
10 filling a position or carrying out the duties and
11 responsibilities of a position normally assigned a higher
12 pay grade in accordance with the personnel classifica-
13 tion system established by the appropriate governing
14 board shall be recommended for a change in job title
15 or shall be returned immediately to the duties and
16 responsibilities outlined in the appropriate job
17 description.

18 Each institution shall submit to the appropriate
19 governing board by the first day of September, one
20 thousand nine hundred eighty-nine, and each year
21 thereafter, a report which shall include the steps being

22 taken to ensure proper employee classification in
23 accordance with the appropriate job titles and pay
24 grades as established by its governing board, any
25 recommended changes in job title, the justification for
26 such recommendations, the effect of such changes on
27 existing personnel, and the fiscal impact thereof.

28 Each institution also may submit, as a part of its
29 annual report to its governing board, recommendation
30 for alterations in job descriptions or classifications,
31 changes in corresponding pay grades, or creation of new
32 job titles or classifications. Such changes, if approved by
33 its governing board, shall be made a part of the
34 personnel classification system of the governing board
35 and shall be applied uniformly at all institutions:
36 *Provided, That, when necessary, the governing board*
37 *may order changes in classifications or changes in job*
38 *titles upon its own authority and shall notify the*
39 *institutions of such changes within thirty days.*

40 Each governing board, upon receipt and review of the
41 annual report submitted by each institution under its
42 control, shall notify the reporting institution by the first
43 day of December, one thousand nine hundred eighty-
44 nine, and each year thereafter, of any action taken in
45 response to recommendations made by the institution.
46 Immediately upon receipt of notification of any changes
47 in the personnel classification system by its governing
48 board, the institution shall post copies of such notice in
49 prominent campus locations. Changes in classification or
50 changes in job title, as approved by the appropriate
51 governing board, shall be effective no later than the first
52 day of July of each year. When such changes affect
53 currently employed personnel, each classified employee
54 so affected shall be notified in writing regarding such
55 change and the effect thereof.

**§18B-9-7. Conferences regarding personnel classifica-
tion.**

- 1 (a) The president of the institution or the designees
- 2 charged with responsibility to develop any personnel
- 3 recommendations for inclusion in the institution's
- 4 annual report to its governing board shall meet and

5 confer during development of the recommendations with
6 any classified employee who (1) may be affected by
7 proposed recommendations to its governing board; or (2)
8 has requested a change in job title.

9 (b) In accordance with the provisions of article twenty-
10 nine, chapter eighteen of this code relating to employee
11 grievance procedures, a classified employee may appeal
12 the initial assignment, any change in the assigned
13 classification or job title, or any change in the system
14 of classification, whether such change is the result of
15 action taken by the appropriate governing board upon
16 its own authority or upon the recommendations of the
17 institutions.

§18B-9-8. Hirings after effective date.

1 Any individual hired as a full-time classified employee
2 after the effective date of this section shall be assigned
3 by the appropriate governing board, with consideration
4 to any recommendations of the institution, to a place-
5 ment on the salary schedule which is appropriate to such
6 individual's classification, job title, pay grade and years
7 of experience: *Provided*, That nothing in this section
8 shall be construed to guarantee to a newly hired
9 classified employee payment of the salary prescribed in
10 section three of this article.

**§18B-9-9. Additional employment by mutual agreement;
provision for governing board approval.**

1 In accordance with rules established by its governing
2 board and by mutual agreement, the president of an
3 institution, or a designated representative, and a
4 classified employee at such institution may agree on
5 duties to be performed by such employee in addition to
6 those duties listed in the job description. The terms and
7 conditions of any such agreement shall be in writing,
8 signed by both parties, and shall describe the additional
9 duties to be performed, the length of time such agree-
10 ment shall be in force and the additional compensation
11 to be paid. Such agreement shall be submitted to the
12 appropriate governing board and shall be in effect
13 unless and until the institution receives notice of

- 14 nonapproval within ten working days following the
15 submission thereof.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

- §18B-10-1. Enrollment, tuition and other fees at educational institutions; refund of fees.
§18B-10-2. Higher education resource fee.
§18B-10-3. Faculty improvement fee.
§18B-10-4. Medical education fee.
§18B-10-4a. Health professions education fee.
§18B-10-5. Fee waivers—Undergraduate schools.
§18B-10-6. Same—Professional and graduate schools.
§18B-10-7. Tuition and fee waivers for children and spouses of officers and firefighters killed in the line of duty.
§18B-10-8. Collection; disposition and use of additional registration fee; creation of special capital improvements funds; revenue bonds.
§18B-10-9. Authority to excuse students in certain educational programs from payment of enrollment fees.
§18B-10-10. Disposition and use of student union fees; issuance of revenue bonds.
§18B-10-11. Fees and money derived from athletic contests.
§18B-10-12. Student activity fees.
§18B-10-13. Fees from operation of dormitories, faculty homes, dining halls and cafeterias.
§18B-10-14. Bookstores.
§18B-10-15. Authority of educational institutions to provide special services and programs; collection and disposition of fees therefor.
§18B-10-16. Disposition of funds in state treasury.

§18B-10-1. Enrollment, tuition and other fees at educational institutions; refund of fees.

- 1 (a) Each governing board shall fix tuition and other
2 fees for each school term for the different classes or
3 categories of students enrolling at each state institution
4 of higher education under its jurisdiction and may
5 include among such fees any one or more of the
6 following: (1) Health service fees, (2) infirmary fees, (3)
7 student activities, recreational, athletic and extracurric-
8 ular fees, which said fees may be used to finance a
9 student's attorney to perform legal services for students
10 in civil matters at such institutions: *Provided*, That such
11 legal services shall be limited to only those types of
12 cases, programs or services approved by the administra-
13 tive head of such institution where such legal services
14 are to be performed; and (4) graduate center fees and

15 branch college fees, or either, if the establishment and
16 operations of graduate centers or branch colleges are
17 otherwise authorized by law. All fees collected at any
18 graduate center or at any branch college shall be paid
19 into special funds and shall be used solely for the
20 maintenance and operation of the graduate center or
21 branch college at which they were collected: *Provided,*
22 *however,* That the maximum fees to be collected under
23 this section for resident students shall not exceed five
24 hundred dollars per semester, and for nonresident
25 students, one thousand dollars per semester. The
26 schedule of all fees, and any changes therein, shall be
27 entered in the minutes of the meeting of the appropriate
28 governing board, and the board shall file with the
29 legislative auditor a certified copy of such schedule and
30 changes.

31 (b) In addition to the fees mentioned in the preceding
32 paragraph, each governing board may impose and
33 collect a student union building fee. All such building
34 fees collected at an institution shall be paid into a special
35 student union building fund for such institution, which
36 is hereby created in the state treasury, and shall be used
37 only for the construction, operation and maintenance of
38 a student union building or a combination student union
39 and dining hall building or for the payment of the
40 principal of and interest on any bond issued to finance
41 part or all of the construction of a student union
42 building or a combination student union and dining hall
43 building or the renovation of an existing structure for
44 use as a student union building or a combination student
45 union and dining hall building, all as more fully
46 provided in section ten of this article. Any moneys in
47 such funds not immediately needed for such purposes
48 may be invested in any such bonds or other securities
49 as are now or hereafter authorized as proper invest-
50 ments for state funds.

51 (c) Refund, as an erroneous payment, may be made of
52 any such fees upon the voluntary or involuntary
53 withdrawal from classes of any student until eight
54 weeks of the school semester or term have expired, but
55 no refund may be made thereafter.

§18B-10-2. Higher education resource fee.

1 In addition to the fees specifically provided for in
2 section one of this article, all students enrolled for credit
3 at a state institution of higher education shall pay a
4 higher education resource fee. Each governing board
5 shall fix the fee rates for the various institutions and
6 classes of students under its jurisdiction and may from
7 time to time change these rates. The amount of the fee
8 charged at each institution shall be prorated for part-
9 time students. The fee imposed by this section is in
10 addition to the maximum fees allowed to be collected
11 under the provision of section one of this article and is
12 not limited thereby. Refunds of such fee may be made
13 in the same manner as any other fee collected at state
14 institutions of higher education.

15 Eighty percent of the total fees collected at each
16 institution pursuant to this section shall be deposited in
17 a special fund in the state treasury for the institution
18 at which the fees are collected and may be used by the
19 institution for libraries and library supplies, including
20 books, periodicals, subscriptions and audiovisual mate-
21 rials, instructional equipment and materials; and for the
22 improvement in quality and scope of student services.
23 The remaining twenty percent of fee collections shall be
24 deposited in a special fund and expended or allocated
25 by the appropriate governing board to meet general
26 operating expenses, excluding personal services, of the
27 state university system or state college system from
28 which the fees were collected: *Provided*, That the board
29 shall, to the maximum extent practicable, offset the
30 impact, if any, on financially needy students of any
31 potential fee increases under this section by allocating
32 an appropriate amount of such fee revenue to the state
33 scholarship program to be expended in accordance with
34 the provisions of article twenty-two-b of chapter
35 eighteen of this code.

36 Each governing board shall, on or before the first day
37 of July of each year, provide the legislative auditor with
38 a report of the projected fee collections for the board and
39 each of its institutions and the expenditures proposed for
40 such fee.

§18B-10-3. Faculty improvement fee.

1 In addition to the fees specifically provided for in
2 sections one and two of this article, all students enrolled
3 for credit at a state institution of higher education shall
4 pay a faculty improvement fee. Each governing board
5 shall fix the fee rates for the various institutions and
6 classes of students under its jurisdiction and may from
7 time to time change these rates: *Provided*, That the fee
8 for each class of students shall be uniform throughout
9 the state and shall be no less than fifteen dollars per
10 semester for residents and no less than fifty dollars per
11 semester for out-of-state students. The amount of the fee
12 charged at each institution shall be prorated for part-
13 time students. The fee imposed by this section is in
14 addition to the maximum fees allowed to be collected
15 under the provisions of section one of this article and is
16 not limited thereby. Refunds of the fee may be made in
17 the same manner as any other fee collected at state
18 institutions of higher education.

19 All faculty improvement fees collected shall be
20 deposited in a special fund in the state treasury. Each
21 governing board shall use such fees, including any fees
22 on deposit as of the effective date of this section, to the
23 extent available to implement article eight of this
24 chapter.

25 Each governing board shall, before the first day of
26 July of each year, provide the legislative auditor with
27 a report of the projected fee collections for each of its
28 institutions.

§18B-10-4. Medical education fee.

1 In addition to the fees specifically provided for in
2 sections one, two and three of this article, all medical
3 students enrolled for credit at the West Virginia
4 University school of medicine, Marshall University
5 school of medicine and the West Virginia school of
6 osteopathic medicine shall pay a medical education fee.
7 The board of trustees shall fix the fee rates for students
8 at each institution and may from time to time change
9 these rates. The fee imposed by this section is in addition
10 to the maximum fees allowed to be collected under the

11 provisions of section one of this article and is not limited
12 thereby. Refunds of the fee may be made in the same
13 manner as any other fee collected at state institutions
14 of higher education. Medical education fees collected
15 shall be deposited in a special revenue account which is
16 hereby created in the state treasury for the school at
17 which the fees are collected and shall be used by the
18 school to offset general operating costs: *Provided*, That
19 the board of trustees may deposit a portion of the total
20 fees collected therein into the medical student loan fund
21 account in accordance with the provisions of article two,
22 chapter eighteen of this code. Before the first day of July
23 of each year, the board of trustees shall provide the
24 legislative auditor with a report of the projected fee
25 collections for each of the schools of medicine.

***§18B-10-4a. Health professions education fee.**

1 In addition to the fees specifically provided for in
2 sections one, two, three and four of this article, all
3 students enrolled for credit at the West Virginia
4 University health sciences center, Marshall University
5 school of medicine and the West Virginia school of
6 osteopathic medicine, shall pay a health professions
7 education fee. The board of trustees shall fix the amount
8 of the fee and may from time to time change that
9 amount. The fee imposed by this section is in addition
10 to the maximum fees allowed to be collected under the
11 provisions of section one of this article and is not limited
12 thereby. Refunds of the fee may be made in the same
13 manner as any other fee collected at state institutions
14 of higher education. All moneys collected from the
15 health professions education fees shall be deposited in
16 a special revenue account for the respective school from
17 which collection is made, said accounts shall be hereby
18 created in the state treasury for the West Virginia
19 health sciences center, Marshall University school of
20 medicine, and the West Virginia school of osteopathic
21 medicine. The moneys in such fund shall be used to
22 offset general operating costs for health sciences
23 education in this state. Before the first day of July

*** Clerk's Note:** Similar provisions of this section also appear in H. B. 2866, §18-24-11, which passed prior to this act.

24 of each year, the board of trustees shall provide the
25 legislative auditor with a report of the projected fee
26 collections during the next fiscal year and a report of
27 fee expenditures for the preceding fiscal year.

§18B-10-5. Fee waivers — Undergraduate schools.

1 Each governing board may establish, from time to
2 time, fee waivers for students in undergraduate studies
3 at institutions under its jurisdiction entitling recipients
4 to waiver of enrollment, tuition, registration, higher
5 education resource and other fees subject to the
6 following conditions and limitations:

7 (1) No state educational institution may have in effect
8 at any time undergraduate fee waivers in a number
9 which exceeds five percent of the number of full-time
10 equivalent undergraduate students registered during
11 the fall semester of the immediately preceding academic
12 year.

13 (2) Each undergraduate fee waiver shall entitle the
14 recipient thereof to attend a designated state educa-
15 tional institution without payment of the enrollment,
16 tuition, registration, higher education resource and
17 other fees as may be prescribed by the governing board
18 and be for a period of time not to exceed eight semesters
19 of undergraduate study.

20 (3) The governing board shall make rules governing
21 the award of undergraduate fee waivers, the issuance
22 and cancellation of certificates entitling the recipients
23 to the benefits thereof, the use of the fee waivers by the
24 recipients and the rights and duties of the recipients in
25 respect to the fee waivers. These rules may not be
26 inconsistent with the provisions of this section.

27 (4) The awarding of undergraduate fee waivers shall
28 be entered in the minutes of the meetings of the
29 governing board, and each board shall file with the
30 legislative auditor a copy of the rules governing the
31 award of the fee waivers and a list of the names of the
32 recipients thereof.

§18B-10-6. Same — Professional and graduate schools.

1 In addition to the fee waivers heretofore authorized
2 for undergraduate study by the provisions of section five
3 of this article, each governing board may establish from
4 time to time fee waivers for study in graduate and
5 professional schools under their jurisdiction, including
6 medicine and dentistry, entitling the recipients to
7 waiver of enrollment, tuition, registration, higher
8 education resource and other fees, subject to the
9 following conditions and limitations:

10 (1) West Virginia University may not have in effect
11 at any time graduate and professional school fee waivers
12 in a number which exceeds ten percent of the number
13 of full-time equivalent graduate and professional
14 students registered during the corresponding fall
15 semester, spring semester and summer term of the
16 immediately preceding academic year. In addition to the
17 above ten percent, all graduate assistants employed by
18 West Virginia University shall be granted a fee waiver.
19 All other institutions of higher education may not have
20 in effect at any time graduate and professional school
21 fee waivers in a number which exceeds five percent of
22 the number of full-time equivalent graduate and
23 professional students registered during the correspond-
24 ing fall semester, spring semester and summer term of
25 the immediately preceding academic year. In addition
26 to the above five percent, all graduate assistants
27 employed by the other institutions shall be granted a fee
28 waiver.

29 (2) Each graduate or professional school fee waiver
30 shall entitle the recipient to waiver of the enrollment,
31 tuition, registration, higher education resource and
32 other fees as may be prescribed by the governing boards
33 and be for a period of time not to exceed the number
34 of semesters normally required in the recipient's
35 academic discipline.

36 (3) The governing boards shall make rules governing
37 the award of graduate and professional school fee
38 waivers, the issuance and cancellation of certificates
39 entitling the recipients to the benefits thereof, the use
40 of the fee waivers by the recipients and the rights and

41 duties of the recipients in respect to the fee waivers.
42 These rules may not be inconsistent with the provisions
43 of this section.

44 (4) The awarding of graduate and professional school
45 fee waivers shall be entered in the minutes of the
46 meeting of each governing board, and each board shall
47 file with the legislative auditor a copy of the rules
48 governing the award of the fee waiver and a list of the
49 names of the recipients thereof.

**§18B-10-7. Tuition and fee waivers for children and
spouses of officers and firefighters killed
in the line of duty.**

1 Each state institution of higher education shall permit
2 any person to attend its undergraduate courses and
3 classes if classroom space is available without charging
4 such person any tuition or any fees, including those
5 provided in sections two and three of this article, if such
6 person is the child or spouse of a law-enforcement officer
7 as defined in section one, article twenty-nine, chapter
8 thirty of this code, a correctional officer at a state penal
9 institution, a conservation officer, or a registered
10 firefighter, and such officer or firefighter was killed in
11 the line of duty while employed by the state or any
12 political subdivision thereof, or such firefighter was a
13 member of a volunteer fire department serving a
14 political subdivision of this state: *Provided*, That the
15 state institution of higher education may require such
16 person to pay special fees, including any laboratory fees,
17 if such fees are required of all other students taking a
18 single or the particular course and may also require
19 such person to pay for parking. The governing boards
20 may promulgate rules for determining the availability
21 of classroom space and other rules as it considers
22 necessary to implement this section, including rules
23 regarding qualifications for attendance, which shall not
24 exceed the qualifications required of other persons.

25 The governing boards may also extend to persons
26 attending courses and classes under this section any
27 rights, privileges or benefits extended to other students
28 which it considers appropriate.

§18B-10-8. Collection; disposition and use of additional registration fee; creation of special capital improvements funds; revenue bonds.

1 (a) In addition to all other fees imposed by the
2 governing boards, there is hereby imposed and the
3 governing boards are hereby directed to provide for the
4 collection of an additional registration fee from all
5 students enrolled in any state institution of higher
6 education under its jurisdiction in the amounts hereinaf-
7 ter provided.

8 For full-time students at each state institution of
9 higher education, the additional registration fee shall be
10 fifty dollars per semester. The governing boards shall
11 have authority to increase such additional registration
12 fee at institutions of higher education under their
13 jurisdiction for students who are nonresidents of this
14 state. For all part-time students and for all summer
15 school students, the governing boards shall impose and
16 collect such fee in proportion to, but not exceeding, that
17 paid by full-time students.

18 The fee imposed by this section shall be in addition
19 to the maximum fees allowed to be collected under the
20 provision of section one of this article and shall not be
21 limited thereby. Refunds of such fee may be made in the
22 same manner as any other fee collected at state
23 institutions of higher education.

24 (b) There is created in the state treasury a state
25 system special capital improvements fund into which
26 shall be paid all proceeds of the additional registration
27 fees collected from students at all state institutions of
28 higher education pursuant to this section to be expended
29 jointly by the governing boards for the payment of the
30 principal of or interest on any revenue bonds issued by
31 the board of regents for which such registration fees
32 were pledged prior to the enactment of this section.

33 At such time as the commingling of such registration
34 fees shall no longer be required, all proceeds shall be
35 paid into the appropriate special capital improvements
36 fund for each governing board for the benefit of any and
37 all state institutions of higher education under the
38 jurisdiction of that governing board.

39 (c) The governing boards may make expenditures
40 from any of the special capital improvements funds
41 established in this section to finance, in whole or in part,
42 together with any federal, state or other grants or
43 contributions, any one or more of the following projects:
44 (1) The acquisition of land or any rights or interest
45 therein, (2) the construction or acquisition of new
46 buildings, (3) the renovation or construction of additions
47 to existing buildings, (4) the acquisition of furnishings
48 and equipment for any such buildings, and (5) the
49 construction or acquisition of any other capital improve-
50 ments or capital educational facilities at such state
51 institutions of higher education, including any roads,
52 utilities or other properties, real or personal, or for other
53 purposes necessary, appurtenant or incidental to the
54 construction, acquisition, financing and placing in
55 operation of such buildings, capital improvements or
56 capital educational facilities.

57 Each governing board, in its discretion, may use the
58 moneys in such special capital improvements funds to
59 finance the costs of the above purposes on a cash basis,
60 or may from time to time issue revenue bonds of the
61 state as provided in this section to finance all or part
62 of such purposes and pledge all or any part of the
63 moneys in such special funds for the payment of the
64 principal of and interest on such revenue bonds, and for
65 reserves therefor. Any pledge of such special funds for
66 such revenue bonds shall be a prior and superior charge
67 on such special funds over the use of any of the moneys
68 in such funds to pay for the cost of any of such purposes
69 on a cash basis: *Provided*, That any expenditures from
70 such special funds, other than for the retirement of
71 revenue bonds, may only be made by the governing
72 board to meet the cost of a predetermined capital
73 improvements program for one or more of the state
74 institutions of higher education, in such order of priority
75 as shall have been agreed upon by the governing board
76 and presented to the governor for inclusion in the annual
77 budget bill, and only with the approval of the Legisla-
78 ture as indicated by direct appropriation for the
79 purpose.

80 Such revenue bonds may be authorized and issued

81 from time to time by the governing board to finance in
82 whole or in part the purposes provided in this section
83 in an aggregate principal amount not exceeding the
84 amount which the governing board shall determine can
85 be paid as to both principal and interest and reasonable
86 margins for a reserve therefor from the moneys in such
87 special funds.

88 The issuance of such revenue bonds shall be autho-
89 rized by a resolution adopted by the governing board,
90 and such revenue bonds shall bear such date or dates,
91 mature at such time or times not exceeding forty years
92 from their respective dates; be in such form either
93 coupon or registered, with such exchangeability and
94 interchangeability privileges; be payable in such
95 medium of payment and at such place or places, within
96 or without the state; be subject to such terms of prior
97 redemption at such prices not exceeding one hundred
98 five per centum of the principal amount thereof; and
99 shall have such other terms and provisions as the
100 governing board shall determine. Such revenue bonds
101 shall be signed by the governor and by the president of
102 the governing board authorizing the issuance thereof,
103 under the great seal of the state, attested by the
104 secretary of state, and the coupons attached thereto shall
105 bear the facsimile signature of the president of the
106 governing board. Such revenue bonds shall be sold in
107 such manner as the governing board may determine to
108 be for the best interests of the state.

109 The governing board may enter into trust agreements
110 with banks or trust companies, within or without the
111 state, and in such trust agreements or the resolutions
112 authorizing the issuance of such bonds may enter into
113 valid and legally binding covenants with the holders of
114 such revenue bonds as to the custody, safeguarding and
115 disposition of the proceeds of such revenue bonds, the
116 moneys in such special funds, sinking funds, reserve
117 funds, or any other moneys or funds; as to the rank and
118 priority, if any, of different issues of revenue bonds by
119 the governing board under the provisions of this section;
120 as to the maintenance or revision of the amounts of such
121 additional registration fees, and the terms and condi-
122 tions, if any, under which such additional registration

123 fees may be reduced; and as to any other matters or
124 provisions which are deemed necessary and advisable by
125 the governing board in the best interests of the state and
126 to enhance the marketability of such revenue bonds.

127 After the issuance of any of such revenue bonds, the
128 additional registration fees at the state institutions of
129 higher education shall not be reduced as long as any of
130 such revenue bonds are outstanding and unpaid except
131 under such terms, provisions and conditions as shall be
132 contained in the resolution, trust agreement or other
133 proceedings under which such revenue bonds were
134 issued.

135 Such revenue bonds shall be and constitute negotiable
136 instruments under the Uniform Commercial Code of
137 this state; shall, together with the interest thereon, be
138 exempt from all taxation by the state of West Virginia,
139 or by any county, school district, municipality or
140 political subdivision thereof; and such revenue bonds
141 shall not be deemed to be obligations or debts of the
142 state, and the credit or taxing power of the state shall
143 not be pledged therefor, but such revenue bonds shall
144 be payable only from the revenue pledged therefor as
145 provided in this section.

**§18B-10-9. Authority to excuse students in certain
educational programs from payment of
enrollment fees.**

1 Whenever the cost of any institute, workshop, special
2 course, or other educational program is wholly financed
3 by a grant from any federal agency or from any
4 foundation, corporation, or other association or person,
5 except for indirect costs of administration and other
6 overhead expenses, such as the cost of providing
7 classrooms and other facilities, the governing board of
8 the state educational institution administering such
9 program shall have the authority to excuse all students
10 enrolled in such program from the payment of tuition,
11 registration and other enrollment fees.

**§18B-10-10. Disposition and use of student union fees;
issuance of revenue bonds.**

1 Whenever the term "student union building" is used

2 in this section, the same shall mean a student union
3 building or a combination student union building and
4 dining hall building; and wherever the term "building
5 fund" is used in this section the same shall mean the
6 respective special student union building funds created
7 as provided in section one of this article for each state
8 educational institution which has imposed student union
9 fees pursuant to section one of this article, to be
10 expended by the appropriate governing board for the
11 benefit of the state institutions of higher education
12 under its jurisdiction.

13 Each governing board may make expenditures from
14 such building funds at the various state institutions of
15 higher education under its jurisdiction to finance in
16 whole or in part together with any federal, state or other
17 grants or contributions, any one or more of the following
18 purposes:

19 (1) The construction and acquisition of new student
20 union buildings;

21 (2) The acquisition, renovation and improvement of
22 existing buildings to be used as student union buildings;

23 (3) The construction of additions, extensions and
24 improvements to existing student union buildings;

25 (4) The acquisition of furnishings and equipment for
26 any existing student union buildings or student union
27 buildings to be constructed or acquired, or the construc-
28 tion of any roads, utilities or other properties, real or
29 personal, or for any other purposes necessary, appurte-
30 nant or incidental to the construction, acquisition,
31 financing and placing in operation of such student union
32 buildings; and

33 (5) The payment of the cost of operation and mainte-
34 nance of such student union buildings, subject however
35 to any covenants or agreements made with the holders
36 of revenue bonds heretofore and hereafter issued
37 pursuant to this section or pursuant to section one of this
38 article.

39 Each governing board, at its discretion, may use the
40 moneys in such building funds to finance the costs of the
41 above purposes on a cash basis, or may from time to

42 time issue revenue bonds of the state as provided in this
43 section to finance all or part of such purposes and pledge
44 all or any part of the moneys in such building funds for
45 the payment of the principal of and interest on such
46 revenue bonds, and for reserves therefor. Any pledge of
47 such building funds for such revenue bonds shall be a
48 prior and superior charge on such special funds over the
49 use of any of the moneys in such funds to pay for the
50 cost of any of such purposes on a cash basis, or for the
51 payment of the cost of operation and maintenance, or
52 any part thereof, of such student union buildings, under
53 such terms and conditions as shall be provided in the
54 proceedings which authorized the issuance of such
55 revenue bonds.

56 Such revenue bonds may be authorized and issued
57 from time to time by a governing board to finance in
58 whole or in part the projects at any state institution of
59 higher education under its jurisdiction provided for in
60 this section in an aggregate principal amount not
61 exceeding the amount which the board shall determine
62 can be paid as to both principal and interest and
63 reasonable margins for a reserve therefor from the
64 moneys in such building funds.

65 The issuance of such revenue bonds shall be autho-
66 rized by a resolution adopted by the governing board,
67 and such revenue bonds shall bear such date or dates;
68 mature at such time or times not exceeding forty years
69 from their respective dates; bear interest at such rate
70 or rates, not exceeding twelve per centum per annum;
71 be in such form either coupon or registered, with such
72 exchangeability and interchangeability privileges; be
73 payable in such medium of payment and at such place
74 or places, within or without the state; be subject to such
75 terms of prior redemption at such prices not exceeding
76 one hundred five per centum of the principal amount
77 thereof; and shall have such other terms and provisions
78 as the board shall determine. Such revenue bonds shall
79 be signed by the governor and by the president of the
80 governing board, under the great seal of the state,
81 attested by the secretary of state, and the coupons
82 attached thereto shall bear the facsimile signature of the
83 president of the governing board. Such revenue bonds

84 shall be sold in such manner as the governing board
85 may determine to be for the best interests of the state.

86 The governing board may enter into trust agreements
87 with banks or trust companies, within or without the
88 state, and in such trust agreements or the resolutions
89 authorizing the issuance of such bonds may enter into
90 valid and legally binding covenants with the holders of
91 such revenue bonds as to the custody, safeguarding and
92 disposition of the proceeds of such revenue bonds, the
93 moneys in such building funds, sinking funds, reserve
94 funds, or any other moneys or funds; as to the rank and
95 priority, if any, of different issues of revenue bonds
96 issued by the governing board for the same educational
97 institution under the provisions of this section; as to the
98 maintenance or revision of the amounts of such student
99 union fees, and the terms and conditions, if any, under
100 which any of such student union fees may be reduced;
101 and as to any other matters or provisions which are
102 deemed necessary and advisable by the governing board
103 in the best interests of the state and to enhance the
104 marketability of such revenue bonds.

105 Any revenues or income derived from the operation
106 of such student union buildings may, in the discretion
107 of the governing board, be used to pay the cost of the
108 operation and maintenance of such student union
109 buildings, or for the debt service on any bonds issued
110 pursuant to this section or pursuant to any other law.

111 After the issuance of any of such revenue bonds, the
112 student union fees at the state institution of higher
113 education for which such revenue bonds were issued
114 shall not be reduced as long as any of such revenue
115 bonds are outstanding and unpaid except under such
116 terms, provisions and conditions as shall be contained in
117 the resolution, trust agreement or other proceedings
118 under which such revenue bonds were issued.

119 Such revenue bonds shall be and constitute negotiable
120 instruments under the Uniform Commercial Code of the
121 state and shall, together with the interest thereon, be
122 exempt from all taxation by the state of West Virginia,
123 or by any county, school district, municipality or
124 political subdivision thereof; and such revenue bonds

125 shall not be deemed to be obligations or debts of the
126 state, and the credit or taxing power of the state shall
127 not be pledged therefor, but such revenue bonds shall
128 be payable only from the student union fees pledged
129 therefor as provided in this section.

130 The provisions of this section shall constitute an
131 additional, alternative and complete authority for the
132 exercise of the powers and the issuance of the bonds
133 provided for in this section, but shall not prevent the
134 governing boards from exercising similar or related
135 powers or issuing bonds therefor under any other law
136 or laws, but the governing board, in exercising the
137 powers and issuing the bonds provided for in this
138 section, shall only be required to comply with the
139 provisions of this section and shall not be required to
140 comply with or be subject to the provisions of any other
141 law or laws.

§18B-10-11. Fees and money derived from athletic contests.

1 The directors of athletics at state institutions of higher
2 education may fix and charge admission fees to athletic
3 contests at state institutions of higher education and
4 may enter into contracts and spend and receive money
5 under such contracts for the student athletic teams of
6 state institutions of higher education to contest with
7 other athletic teams inside or outside the state. All
8 money received from such fees and contracts shall be
9 deposited into the athletic accounts of the state institu-
10 tions of higher education.

11 All money derived from such fees and under such
12 contracts shall be used to defray the cost of maintaining
13 the athletic department and athletic program of such
14 institutions. The operation of training camps and
15 training tables and providing room accommodations for
16 participants in the athletic program of such institutions
17 shall be recognized and considered as a proper part of
18 such maintenance, but the specific mention of training
19 camps and training tables and providing room accom-
20 modations shall not be construed or understood to limit
21 in any way the general power and authority otherwise
22 granted and conferred by this section: *Provided, That*

(1) one percent of the total gross receipts deposited into the athletic accounts and (2) not less than twenty-five percent of the net receipts from televised athletic events, bowl games and post-season tournaments deposited into the athletic accounts shall be transferred into a separate and distinct special revenue account for each individual state institution of higher education, which special revenue account shall be designated "athletic facilities construction, repair or replacement reserve account," in the state treasury. Such revenues shall be used only for construction, repair or replacement of athletic facilities at the same individual state institution of higher education to which such special revenue account is credited. Notwithstanding any other provision in this section to the contrary, in the year in which they are received, no more than twenty-five percent of the net receipts from televised athletic events, bowl games and post-season tournaments deposited into athletic accounts may be transferred into other accounts of the same state institution of higher education having such receipts for the support of academic programs to meet an occasional rather than recurrent need or expense, and in accord with legislative rules promulgated by the appropriate governing board in accordance with chapter twenty-nine-a of this code, notwithstanding any other provision of this code to the contrary.

§18B-10-12. Student activity fees.

The president or other administrative head of any state institution of higher education may authorize the collection of fees from students for the support of extracurricular activities of the students, and after authorizing the collection of such fees, the president or other administrative head shall file with the state auditor and state budget director a certified detailed statement of the fees authorized to be collected and the purpose for which they are to be spent.

§18B-10-13. Fees from operation of dormitories, faculty homes, dining halls and cafeterias.

The appropriate governing board of each state institution of higher education shall fix the fees to be charged students and faculty members for rooms, board

4 and meals at the dormitories, faculty homes, dining
5 halls and cafeterias operated by such board at the
6 institution. Such fees shall be commensurate with the
7 complete cost of such services.

8 All fees collected for such services shall be used first
9 to pay the operating and maintenance costs of the
10 dormitories, faculty homes, dining halls and cafeterias
11 and to meet interest, principal and sinking fund
12 requirements due on any outstanding revenue bonds for
13 which such receipts may have been pledged as security.
14 Any such receipts not needed for these purposes may be
15 expended by the appropriate governing board to defray
16 the costs in whole or in part for the construction of any
17 such facility.

§18B-10-14. Bookstores.

1 The appropriate governing board of each state
2 institution of higher education shall have the authority
3 to establish and operate a bookstore at the institution.
4 The bookstore shall be operated for the use of the
5 institution itself, including each of its schools and
6 departments, in making purchases of books, stationery
7 and other school and office supplies generally carried in
8 college stores, and for the benefit of students and faculty
9 members in purchasing such products for their own use,
10 but no sales shall be made to the general public. The
11 prices to be charged the institution, the students and the
12 faculty for such products shall be fixed by the governing
13 board, shall not be less than the prices fixed by any fair
14 trade agreements, and shall in all cases include in
15 addition to the purchase price paid by the bookstore a
16 sufficient handling charge to cover all expenses in-
17 curred for personal and other services, supplies and
18 equipment, storage, and other operating expenses, to the
19 end that the prices charged shall be commensurate with
20 the total cost to the state of operating the bookstore.

21 All moneys derived from the operation of the store
22 shall be paid into a special revenue fund as provided in
23 section two, article two, chapter twelve of this code.
24 Each governing board shall, subject to the approval of
25 the governor, fix and from time to time change the
26 amount of the revolving fund necessary for the proper
27 and efficient operation of each bookstore.

28 Moneys derived from the operation of the bookstore
29 shall be used first to replenish the stock of goods and
30 to pay the costs of operating and maintaining the store.
31 From any balance in the Marshall University bookstore
32 fund not needed for operation and maintenance and
33 replenishing the stock of goods, the governing board of
34 that institution shall have authority to expend a sum not
35 to exceed two hundred thousand dollars for the construc-
36 tion of quarters to house the bookstore in the university
37 center at Marshall University. Until such quarters for
38 housing the bookstore are completed, the governing
39 board of Marshall University and the governor shall
40 take this authorization into account in fixing the amount
41 of the revolving fund for the Marshall University
42 bookstore.

**§18B-10-15. Authority of educational institutions to
provide special services and programs;
collection and disposition of fees
therefor.**

1 The appropriate governing board of each state
2 institution of higher education shall have authority to
3 provide special services and special programs at such
4 institutions and may fix and collect special fees or
5 charges therefor. Such special services and special
6 programs may include any one or more of the following:

7 (1) The conduct of music camps and band, orchestra,
8 or voice clinics for secondary school students or other
9 youth groups, summer tutoring programs for primary
10 and secondary school students, speech therapy clinics
11 and services, educational and psychological testing
12 programs, student guidance programs, and statistical
13 studies and calculations by an electronic computer
14 service.

15 (2) Rental of lockers or other storage facilities and the
16 maintenance and operation of parking facilities for use
17 by students, faculty, staff, and visitors.

18 (3) Rental of musical recordings, educational films,
19 slides, and other audiovisual aids.

20 (4) Microfilming or other mechanical reproduction of
21 records and noncopyrighted library reference materials.

22 (5) Institutes, conferences, workshops, postgraduate
23 and refresher noncredit courses, and any other special
24 program or special service customarily provided by
25 institutions of higher education.

26 (6) Motor pools, consisting of motor vehicles for the
27 use of their employees when carrying on the business
28 and affairs of the institutions.

29 All fees or charges collected for any such special
30 services or programs shall be paid into a special fund
31 and shall be expended solely for the maintenance,
32 operation and support of such services and programs.

33 Whenever any such special service is provided by one
34 school, division or department of a state institution of
35 higher education for the benefit of any other school,
36 division or department in the same institution, the cost
37 shall be paid by the school, division or department
38 requesting the service and shall be deposited and
39 expended as provided above. Whenever a motor pool is
40 provided by the governing board of a state institution
41 of higher education, such board may charge any school,
42 college, department or division of such institution for
43 which a vehicle is used a reasonable amount for such
44 use, which amount shall be paid by such school, college,
45 department or division and shall be deposited and
46 expended as above provided.

§18B-10-16. Disposition of funds in state treasury.

1 Except as may be provided for in any bond resolution
2 in effect, funds in the state treasury heretofore collected
3 from any of the sources defined in the foregoing sections
4 shall remain in the state treasury for use by the
5 institution where collected. Any interest revenue
6 generated by a special student fee account shall only be
7 expended at or for the institution where such fee was
8 collected.

ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.

§18B-11-1. Center for regional progress created; director powers; mission and purpose.

§18B-11-2. Institute for public affairs; creation and purposes.

§18B-11-3. Institute for international trade development; creation and purpose.

§18B-11-1. Center for regional progress created; director powers; mission and purpose.

1 (a) There is hereby created an economic development
2 entity known as the "center for regional progress" at
3 Marshall University. The center shall be under the
4 control and supervision of a director, which position is
5 to be filled by an individual qualified by experience and
6 education. The director shall be appointed by the
7 president of Marshall University. The director may
8 employ such staff as is necessary to accomplish the
9 center's mission and purpose. The director shall have
10 administrative control and supervision of the center.
11 The center shall emphasize the creation of new jobs and
12 the retention of existing jobs as the foundation necessary
13 for the economic development of West Virginia. The
14 center shall provide basic and applied research and
15 technical assistance; counseling and referral service;
16 graduate research and cooperative education programs;
17 management and marketing assistance; continuing
18 education, seminars, workshops; courses to meet both
19 employer and employee educational needs; and such
20 other activities as are necessary to carry out the
21 provisions of this article. The center shall provide
22 research and technical assistance to meet the economic
23 and community development needs of local, municipal,
24 county and state governments.

25 (b) The center shall upon request respond to public
26 policy needs of the Legislature and the executive; and
27 apply for and obtain grants or funds from all available
28 sources, private and public, state, federal, and other-
29 wise. The center shall maintain a roster of faculty and
30 staff at Marshall University and other institutions of
31 higher education from which specific expertise may be
32 drawn.

§18B-11-2. Institute for public affairs; creation and purposes.

1 (a) There is hereby created as an independent entity
2 the institute for public affairs, to be located and
3 operated at West Virginia University. The institute
4 shall be under the control and supervision of a director,
5 which position is to be filled by an individual whose

6 credentials include accomplishments in the interdiscipli-
7 nary academic fields and government. The director shall
8 be appointed by the president of West Virginia Univer-
9 sity. The institute shall engage faculty from institutions
10 of higher education throughout the state and shall
11 cooperatively develop a program with other such
12 institutions. The terms of such participation may be by
13 contract, loan, part-time basis or other such
14 arrangement.

15 (b) The institute is directed to conduct independent
16 research and propose strategies and options on public
17 issues and policies upon its own initiative or as may be
18 requested by the executive or the Legislature.

19 (c) The institute is directed to seek all other funds,
20 grants, and other sources of assistance from other
21 agencies of government as well as the private sector.

22 (d) The director shall have administrative control and
23 supervision of the institute.

**§18B-11-3. Institute for international trade development;
creation and purpose.**

1 There is hereby created as an independent entity the
2 institute for international trade development, to be
3 located and operated at Marshall University. The
4 institute is established to facilitate faculty involvement
5 in the formation and continuation of international
6 market entry and development strategy, to provide
7 assistance to state businesses in exporting and attract-
8 ing foreign investment, and to engage in other activities
9 designed to promote, develop and stimulate export
10 expansion and foreign direct investment. The institute
11 shall be under the control and supervision of a director,
12 who shall be appointed from among the faculty by the
13 president of Marshall University. The institute shall
14 engage faculty from institutions of higher education
15 throughout the state and shall cooperatively develop an
16 export program with the other such institutions. The
17 terms of such participation may be by contract, loan,
18 part-time basis, or other such arrangement. The
19 institute shall develop with the board of trustees and the
20 governor a program of student internships in interna-
21 tional business to place qualified students for academic

22 credit with businesses in West Virginia to help develop
23 export awareness and potential. The institute shall
24 further provide research and analysis on matters of
25 international trade upon request of the executive or the
26 Legislature; initiate partnership grants, and proposals
27 in the area of international trade in accordance with the
28 provisions of article two-a, chapter five-b of this code;
29 and apply for and obtain grants or funds from all
30 available sources, private and public.

**ARTICLE 12. RESEARCH AND DEVELOPMENT AGREEMENTS
FOR STATE INSTITUTIONS OF HIGHER
EDUCATION.**

§18B-12-1. Definitions.

§18B-12-2. Legislative findings and purpose.

§18B-12-3. Boards authorized to contract with corporations; characteristics
of corporations.

§18B-12-4. Agreement; required provisions.

§18B-12-5. Audit.

§18B-12-6. Conflicts of interest.

§18B-12-7. No waiver of sovereign immunity.

§18B-12-8. Not obligation of the state.

§18B-12-9. Sections and provisions severable.

§18B-12-1. Definitions.

1 The following words used in this article shall, unless
2 the context clearly indicates a different meaning, be
3 construed as follows:

4 (a) "Agreement" means any agreement being entered
5 into between a governing board and a corporation
6 pursuant to section four of this article.

7 (b) "Corporation" means a nonstock, not-for-profit
8 corporation established under the general corporation
9 laws of the state which meets the description presented
10 by section three of this article.

11 (c) "Corporate directors" means the board of directors
12 of a corporation.

§18B-12-2. Legislative findings and purpose.

1 (a) The Legislature finds and determines that the
2 future economic development in the state will depend in
3 part upon research developed at the state institutions of
4 higher education, and enhanced research opportunities
5 for state institutions of higher education will promote

6 the general economic welfare of the citizens of the state.
7 In order to enhance the competitive position of state
8 institutions of higher education in the current environ-
9 ment for research and development, expenditures for
10 equipment and material for research projects must be
11 handled in an expeditious fashion, and the acquisition
12 and utilization of research grants can be simplified and
13 expedited through the utilization of corporations.

14 (b) The interest of the citizens of the state will be best
15 met by agreements entered into and carried out by the
16 governing boards and corporations to provide research
17 assistance for state institutions of higher education.
18 Therefore, in order to facilitate research and develop-
19 ment grants and opportunities for state institutions of
20 higher education, it is appropriate to authorize the
21 governing boards to contract with corporations organ-
22 ized for the purpose of providing such services to state
23 institutions of higher education.

**§18B-12-3. Boards authorized to contract with corpora-
tions; characteristics of corporations.**

1 Each governing board for a state institution of higher
2 education is hereby authorized to enter into agreements
3 and any other contractual relationships with one or
4 more corporations formed with respect to such state
5 institution of higher education, but only if each such
6 corporation meets the following descriptions:

7 (1) The president and the president's appointees from
8 the institution shall constitute a majority of the voting
9 corporate directors.

10 (2) The corporation must be organized as a nonprofit,
11 nonstock corporation under the general corporation
12 laws of the state exclusively for charitable, educational
13 or scientific purposes within the meaning of section
14 501(c) of the Internal Revenue Code of 1986, as
15 amended, to foster and support research at the respec-
16 tive state institution of higher education and to provide
17 evaluation, development, patenting, management and
18 marketing services for inventions of the faculty, staff
19 and students of such state institution of higher educa-
20 tion.

21 (3) The meetings of the corporate directors shall be
22 subject to the provisions of section three, article nine-
23 a, chapter six of this code.

24 (4) Upon dissolution of the corporation, the assets of
25 the corporation shall be transferred to such entity as the
26 appropriate governing board shall designate for the
27 benefit of the state institution of higher education:
28 *Provided*, That such recipient shall be an organization
29 operated exclusively for charitable, educational or
30 scientific purposes as shall at such time qualify as an
31 exempt organization under section 501(c)(3) of the
32 Internal Revenue Code of 1986, as amended.

§18B-12-4. Agreement; required provisions.

1 (a) Notwithstanding section ten, article three, chapter
2 twelve of this code or any other provision of law to the
3 contrary, each governing board is hereby authorized to
4 enter into an agreement with a corporation, which
5 agreement shall be for the benefit of such state
6 institution of higher education and contain the following
7 provisions, subject to further specification as shall be
8 mutually agreed upon by the appropriate governing
9 board and the corporation:

10 (1) On the effective date of the agreement, the
11 corporation shall be charged with the responsibility of
12 serving as fiscal agent for sponsored projects conducted
13 by the faculty, staff and students of the state institution
14 of higher education, and grants shall be accepted by the
15 corporation on behalf of the institution and assigned to
16 the corporation for fiscal management.

17 (2) The corporation shall provide evaluation, develop-
18 ment, patenting, licensing, management and marketing
19 services for inventions, processes, trademarks, copy-
20 rights or any other intellectual property developed by
21 faculty, staff and students of any state institution of
22 higher education.

23 (3) The corporation shall have the right to determine
24 the application of the proceeds from any invention,
25 process, trademark, copyright or any other intellectual
26 property developed by the faculty, staff or students of
27 a state institution of higher education among the

28 corporation, the inventor or developer, and the
29 institution.

30 (4) The corporation shall have such additional respon-
31 sibilities related to the administration of research and
32 development at the state institution of higher education
33 as are necessary or desirable to facilitate the develop-
34 ment of research at the institution.

35 (b) Upon termination of the agreement, the funds or
36 grants paid or held by the corporation shall be paid to
37 the state institution of higher education or its designee
38 as the appropriate governing board shall direct.

39 (c) A corporation may utilize both corporation em-
40 ployees and personnel of the state institution of higher
41 education, provided, however, that the corporation may
42 pay the costs incurred by the state institution of higher
43 education including personnel funded on grants and
44 contracts, fringe benefits of personnel funded on grants
45 and contracts, administrative support costs and other
46 costs which may require reimbursement and may
47 include as costs any applicable overhead and fringe
48 benefit assessments necessary to recover the costs
49 expended by the state institution of higher education
50 pursuant to the terms of the agreement, it being the
51 intention that a board may be reimbursed for expenses
52 incurred by it pursuant to the agreement.

§18B-12-5. Audit.

1 The operations of the corporation shall be subject to
2 an audit by an independent auditor.

§18B-12-6. Conflicts of interest.

1 Notwithstanding any other provision of this code to
2 the contrary, officers and employees of a governing
3 board and the affected state institution of higher
4 education may hold appointments to offices of the
5 corporation and be corporate directors or officers or
6 employees of other entities contracting with either the
7 corporation or a governing board of a state institution
8 of higher education. The executive director of the
9 corporation shall have dual appointment with the state
10 institution of higher education. The governing board of
11 a state institution of higher education and the corporate

12 directors must be informed of such appointments
13 annually.

§18B-12-7. No waiver of sovereign immunity.

1 Nothing contained in this article shall be deemed or
2 construed to waive or abrogate in any way the sovereign
3 immunity of the state or to deprive a governing board
4 of a state institution of higher education, a state
5 institution of higher education or any officer or em-
6 ployee thereof of sovereign immunity.

§18B-12-8. Not obligation of the state.

1 Obligations of a corporation shall not constitute debts
2 or obligations of a state institution of higher education,
3 the governing board thereof or the state.

§18B-12-9. Sections and provisions severable.

1 The sections of this article, and the provisions and
2 parts of said sections, are severable, and it is the
3 intention to enact the whole or any part of the powers
4 provided for in this article, and, if any of said sections,
5 or the provisions or parts of any said sections, or the
6 application thereof to any person or circumstance, are
7 for any reason held unconstitutional or invalid, it is the
8 intention that the remaining sections of this article, and
9 the remaining provisions or parts of any said sections,
10 shall remain in full force and effect.

ARTICLE 13. HIGHER EDUCATION-INDUSTRY PARTNERSHIPS.

§18B-13-1. Legislative purpose.

§18B-13-2. The West Virginia foundation for science and technology.

§18B-13-3. Higher education-industry collaboration and technical assist-
ance.

§18B-13-4. High-Tech 2000 program for research and technical assistance.

§18B-13-5. Special High-Tech 2000 Fund.

§18B-13-6. High-Tech 2000 board; grants; authority.

§18B-13-7. Powers and duties.

§18B-13-8. Appointment of the director.

§18B-13-9. Annual reports.

§18B-13-10. High-Tech 2000 research zones and parks.

§18B-13-11. Research park or zone tax exemptions.

§18B-13-12. Use of state property and equipment; faculty.

§18B-13-1. Legislative purpose.

1 A pressing need exists for collaborative research and
2 development between institutions of higher education

3 and industry. This need also extends to assisting
4 companies to develop and adapt to new technology. A
5 commitment by the state to support cooperative univer-
6 sity-industry partnerships will preserve existing jobs
7 and create new jobs; promote development of business
8 enterprises and help them become competitive; and
9 enable West Virginia to achieve the goals of economic
10 growth and full employment by revitalizing and
11 diversifying the West Virginia economy. Focused
12 research and technical assistance efforts related to West
13 Virginia industry will speed such development, improve
14 technology transfer, assist companies in becoming
15 growth leaders and link basic research and technolog-
16 ical developments to economic advancement.

17 It is the purpose of the Legislature to establish the
18 West Virginia foundation for science and technology to
19 have as its goals the movement of the state of West
20 Virginia into the forefront of science and technology by
21 the year two thousand; the attraction of business, federal
22 contracts and industry; and the creation of jobs for the
23 people of this state, through applied science and
24 technology and partnership programs as set forth in this
25 article.

**§18B-13-2. The West Virginia foundation for science and
technology.**

1 There is hereby created the West Virginia foundation
2 for science and technology for the purpose of developing
3 and implementing the High-Tech 2000 fund as set forth
4 in this article, and for the awarding of grants and other
5 assistance as provided herein. Grants shall concentrate
6 on targeted job-creating industries, processes and
7 research as determined by the High-Tech 2000 board of
8 trustees according to the strategic comprehensive plan
9 and grant program required in this article, but shall
10 include immediate priority for the topics of computer
11 software, federal contract procurement, flexible manu-
12 facturing, materials handling and distribution, and
13 hardwood manufacturing.

**§18B-13-3. Higher education-industry collaboration and
technical assistance.**

1 Institutions of higher education shall develop a plan

2 to engage in collaborative projects designed to assist
3 business to adapt or develop new technology under this
4 article and shall be eligible to receive financial support
5 through the matching grant programs defined in this
6 article.

7 The foundation is authorized and empowered to solicit
8 and accept financial support from sources, including
9 federal funds, other than the state. Any institution of
10 higher education making application for financial
11 support from the foundation may deposit all or any part
12 of funds received from the special High-Tech 2000 fund
13 into a special revenue account in the state treasury
14 which may be established.

§18B-13-4. High-Tech 2000 program for research and technical assistance.

1 The High-Tech 2000 board shall have the authority to
2 allocate any funds available to higher education-
3 industry projects operating under the provisions of this
4 article. The amount of the grant may not exceed the
5 level of contribution from all other sources combined.

6 The High-Tech 2000 board shall negotiate a contract
7 for all grants, the terms of which should, if practicable,
8 provide for payment of negotiated royalties, royalty
9 sharing arrangements, loans, hybrid-debt equity arrange-
10 ments, stock purchase arrangements or other pay-
11 ments to the fund, established in section five of this
12 article.

13 The grant program shall bring together, through
14 challenge or matching grants, partners from the
15 business, industry, public and educational sectors to
16 develop and apply technologies which will strengthen
17 existing business and stimulate the formation of new
18 firms and products including:

19 (1) *Joint partnership research and development pro-*
20 *jects.*—Such projects shall require a joint effort of a West
21 Virginia business or businesses and an institution of
22 higher education in this state with the purpose of
23 preserving or creating jobs in this state;

24 (2) *Education and training projects.*—Such projects
25 shall include employment training or retraining, labor

26 market and occupational analysis, new courses, sharing
27 of costly equipment, and educational or technical
28 assistance with small business innovation centers; and

29 (3) *Entrepreneurial development projects*.—Such pro-
30 jects shall include technical assistance, development of
31 business plans, management counseling, technology
32 transfer, and venture capital assistance, with emphasis
33 on establishing new projects, processes or services.

§18B-13-5. Special High-Tech 2000 Fund.

1 There is hereby established a special High-Tech 2000
2 Fund to which shall be credited any state appropria-
3 tions, gifts, grants or other moneys available to the fund.

§18B-13-6. High-Tech 2000 board; grants; authority.

1 There is hereby created a High-Tech 2000 board
2 consisting of the governor or a designee, the president
3 of West Virginia University or a designee, the president
4 of Marshall University or a designee, the president of
5 West Virginia Institute of Technology or a designee, the
6 president of Shepherd College or a designee, the director
7 of the governor's office of economic and community
8 development, or a designee, and four persons from the
9 private sector who are representative of each of the
10 congressional districts of the state, and which such
11 private sector members shall be appointed to staggered
12 four-year terms by the governor with the advice and
13 consent of the Senate.

14 The High-Tech 2000 board shall have the authority to
15 review and approve all applications for grants or funds
16 from the special High-Tech 2000 fund established
17 pursuant to section five of this article and to establish
18 rules for the administration of the fund.

19 Board members representing the private sector shall
20 be reimbursed for all necessary expenses incurred in
21 connection with the performance of their duties as
22 members.

§18B-13-7. Powers and duties.

1 The High-Tech 2000 board is hereby authorized and
2 directed to develop a strategic comprehensive plan and
3 grant program to attract new science and high technol-

4 ogy industries, to retain and expand current state
5 industries through technology and other processes, and
6 to increase research grants, contracts, matching funds
7 and procurement arrangements from the federal
8 government, private industry and other agencies. Such
9 initial, and annually updated, strategic comprehensive
10 plan shall be developed and annually filed with the
11 governor and Legislature. The High-Tech 2000 board
12 shall consult with business, labor and other agencies of
13 government, including institutions of higher education,
14 for the purpose of determining such initial, and annually
15 updated, strategic comprehensive plan.

16 The High-Tech 2000 board shall establish a grant
17 program, to be known as the High-Tech 2000 program,
18 to implement the strategic comprehensive plan.

19 The High-Tech 2000 board shall establish criteria for
20 the grant program, and applications provided for
21 herein, together with contractual provisions to protect
22 the state's interest and financial commitment to such
23 grant program.

24 The High-Tech 2000 board shall review the work and
25 projects undertaken by the center of regional progress,
26 the center for economic research, the institute for
27 international trade development and the West Virginia
28 foundation for science and technology.

§18B-13-8. Appointment of the director.

1 The director of the foundation shall be appointed by
2 the governor, with the advice and consent of the Senate,
3 from a list of three persons submitted by the High-Tech
4 2000 board. The High-Tech 2000 board shall appoint a
5 search committee of representatives of the educational,
6 government, business and labor sectors to solicit and
7 interview candidates for the position of director, who
8 shall be qualified by knowledge and experience in the
9 field of business and industry. The search committee
10 shall present a list of three nominations to the governor.
11 The director of the governor's office of community and
12 industrial development shall act as director of the
13 foundation until the governor shall appoint a director.

14 The High-Tech 2000 board shall establish a salary for

15 the director at a level sufficient to attract and retain an
16 individual of knowledge and experience in the field.

§18B-13-9. Annual reports.

1 On the first day of January of each year, the director
2 shall submit a report on the operation of the foundation,
3 including expenditures from the special High-Tech 2000
4 Fund, to the governor and to the Legislature. Such
5 report shall include a summary of the expenditures
6 from the subject fund and a complete statement of
7 grants made hereunder.

§18B-13-10. High-Tech 2000 research zones and parks.

1 (a) The governor's office of community and industrial
2 development shall work with the county commissions,
3 the municipalities and local development authorities
4 where state colleges and universities are located, and
5 shall develop a plan and program for the establishment
6 and operation of qualifying High-Tech 2000 research
7 zones, parks and technology centers on or near the
8 campuses of selected universities and colleges to attract
9 local business and industry engaged in science and
10 technology related research.

11 (b) The governor's office of community and industrial
12 development shall coordinate the development of such
13 plan and program, which shall include qualifications for
14 eligible High-Tech 2000 research zones, parks and
15 research centers and which qualifications shall require
16 a minimum partnership commitment from the private
17 sector either in the construction, operation or location of
18 the research parks or zones or technology centers; and
19 the West Virginia economic development authority shall
20 have authority to enter into agreements with state
21 institutions of higher education, private developers or
22 other interested businesses or persons to acquire,
23 finance, construct, operate, own, lease or otherwise
24 manage any research park or zone and to collect rentals
25 or other forms of payment for the operation of the
26 research parks or zones or technology centers.
27 Ownership of the research park or zone shall be in the
28 state of West Virginia, the West Virginia industry and
29 jobs development corporation or a governing board.

30 The West Virginia economic development authority is
31 hereby authorized either singularly or in conjunction
32 with any county commission, municipality or local
33 development authority, to issue special High-Tech 2000
34 bonds for the purpose of this section, including, but not
35 limited to, special project revenue bonds and special
36 user bonds limited to the actual cost of construction and
37 start-up of any qualifying and approved research park
38 or zone or technology centers, and improvements
39 necessary thereto, pursuant to article twelve-b, chapter
40 eighteen of this code.

§18B-13-11. Research park or zone tax exemptions.

1 Notwithstanding any other provision of this code to
2 the contrary relating to any other exemptions or credits
3 to which any business may be entitled under this code,
4 the following exemptions shall apply to any qualified,
5 approved High-Tech 2000 research park or zone or
6 technology center:

7 (a) The enterprise zone tax exemptions as provided in
8 section five, article two-b, chapter five-b of this code;

9 (b) A tax credit for qualified business, in the amount
10 of the workers' compensation premium paid in accor-
11 dance with article two, chapter twenty-three of this
12 code, which credit shall be credited against any
13 corporate net income tax or personal income tax of the
14 qualified business or liability of the owners of the
15 qualified business which is a proprietorship or a
16 partnership;

17 (c) The deferral for qualified business of all state
18 corporate net income tax, business and occupation tax,
19 telecommunications tax, severance tax, business fran-
20 chise tax, or other state income tax liability for the start-
21 up period of the business not to exceed three years, and
22 qualified business shall be entitled to an exemption from
23 any such deferred tax if such business both employs at
24 least seven persons on a full-time basis as of the due date
25 of the deferred tax liability, and the qualified business
26 maintains an average employment of at least seven full-
27 time employees over the last two years of the three year
28 start-up period.

§18B-13-12. Use of state property and equipment; faculty.

1 (a) The governing boards are authorized to provide
2 for the low cost and economical use and sharing of state
3 property and equipment, including computers, research
4 labs and other scientific and necessary equipment to
5 assist any qualified business within an approved
6 research park or zone or technology center. The
7 governing boards shall approve a schedule of nominal
8 or reduced cost reimbursements to the state for such
9 use.

10 (b) The governing boards shall develop and provide
11 for a program of release time, sabbaticals or other forms
12 of faculty involvement or participation with any
13 qualifying business.

14 (c) The Legislature finds that cooperation, commun-
15 ication and coordination are integral components of
16 higher education's involvement in economic develop-
17 ment. In order to proceed in a manner that is cost
18 effective and time efficient, it shall be the duty of the
19 governing boards to review and coordinate such aspects
20 of the programs administered by the governing boards.
21 Such review and coordination shall not operate so as to
22 adversely affect sources of funding nor shall it affect any
23 statutory characterization of any program as an
24 independent entity. The governing boards shall report
25 on an annual basis to the Legislature and the governor.
26 The report shall contain the following information:

27 (1) The number of seminars and workshops
28 conducted;

29 (2) The subject matter addressed in each seminar and
30 workshop;

31 (3) The number of feasibility studies conducted and
32 the subject matter contained in each study; and

33 (4) An accounting of the cost of all travel expenses,
34 seminars, workshops and feasibility studies.

ARTICLE 14. MISCELLANEOUS.

§18B-14-1. Authorization to sell West Virginia University poultry farm properties located in Morgantown.

§18B-14-2. Authorization to sell West Virginia University vacant lot located in Morgantown and biological research station located in Terra Alta.

§18B-14-1. Authorization to sell West Virginia University poultry farm properties located in Morgantown.

1 (a) The board of trustees is hereby authorized and
2 empowered to sell those parcels of land situate on the
3 Van Voorhis Road in Monongalia County, West Virgi-
4 nia, bounded and described as follows:

5 Beginning at a post standing south of the center line
6 of the said Van Voorhis Road, in the line of property
7 now or formerly of Vandervort, 170.0 feet, thence from
8 said post, S. 75 degrees 34' E. 1190.6 feet to a white oak
9 stump, corner to land now or formerly of Gorman,
10 Goodwin, Baker and Hawkins; thence with a line of the
11 said corner to land of J. D. Harless, and with his said
12 line, N. 58 degrees 18' W. 279.7 feet to a point in the
13 center line of said Van Voorhis Road; thence with the
14 center line of said road, S. 56 degrees 25' W. 946.1 feet
15 to a point in the center of said road; thence S. 10 degrees
16 34' E. 170.0 feet to the place of beginning, containing
17 15.71 acres, as surveyed and platted by B. W. Reynolds,
18 Surveyor, October 28, 1946.

19 And, beginning at a stake in a line of Charles Baker
20 and 27.96 feet from the corner of Charles Baker and D.
21 L. Hartman; thence N. 26 degrees 26' E. 150 feet to a
22 stake; thence S. 63 degrees 34' E. 70 feet to a stake;
23 thence S. 26 degrees 26' thence N. 36 degrees 58' W. 7.29
24 feet to the place of beginning, containing .28 acres, more
25 or less. And, beginning at a stake in a line of Charles
26 Baker and on a corner of land of Virginia May Burruss
27 and A. J. W. Headlee; thence N. 26 degrees 26' E. 160
28 feet to a stake; thence S. 63 degrees 34' E. 70 feet to
29 a stake; thence S. 26 degrees 26' W. 160 feet to a stake
30 on a corner of land of Virginia May Burruss and A. J.
31 W. Headlee; thence N. 63 degrees 34' W. 75 feet to the
32 place of beginning, containing .257 acres, more or less.

33 And, beginning at a stone corner of the lands of W.
34 W. McClure and L. O. Starkey, and running Southwest
35 a distance of 660 feet (40 poles) to a point or corner of
36 lands of L. O. Starkey and Emma Hill; thence westward
37 a distance of 587.4 feet (35.35 poles) to a white oak tree,
38 corner to lands of the said Emma Hill and Charles M.
39 Baker; thence northwest a distance of 610.5 (37 poles)
40 to a walnut tree, corner to lands of Charles M. Baker

41 and Martin L. Goodwin; thence in an easterly directiona
42 distance of 990 feet (60 poles) to the cornerstone herein-
43 before mentioned as the place of beginning, containing
44 12 3/4 acres, more or less.

45 And, beginning at a point in the line of property
46 formerly belonging to James Gorman, being the prop-
47 erty formerly occupied by S. S. Ivill, which said
48 beginning point is N. 9 1/2 degrees W. 739 feet from
49 the center of Chestnut Ridge Road; thence with the line
50 of property formerly belonging to Coleman Vandervort
51 and now belonging to Headlee, and thence with a line
52 of Headlee, S. 80 degrees E. 535 feet, more or less, to
53 the corner of Baker; and thence with Baker two lines
54 in a Southerly direction with the line of Baker, 645 feet
55 to a point and 576 feet to a point in the line of Baker,
56 which said last mentioned point is 754 feet in a northerly
57 direction from the center of said Chestnut Ridge Road;
58 and thence with an arbitrary line through the property
59 formerly belonging to Adam W. Thompson in a Wes-
60 terly direction 570 feet to the place of beginning,
61 containing 16 acres, more or less; and being the same
62 real estate conveyed to the grantor, Lee Moore, by deed
63 from Benjamin G. Reeder and Marie F. Reeder, his
64 wife, dated February 28, 1956, and recorded in the
65 office of the clerk of the County of Monongalia, West
66 Virginia, at a public auction: *Provided*, That prior to
67 such action the board of trustees shall have the property
68 appraised by two licensed appraisers and shall not sell
69 the property for less than the average of the two
70 appraisals.

71 (b) The proceeds from the sale of the property
72 referred to shall be deposited in a special revenue
73 account from which the board of trustees is hereby
74 authorized to expend funds to relocate the West Virginia
75 University poultry facility with such surplus as may be
76 left being used for improvements to the college of
77 agriculture and forestry facilities or deposited in a
78 special medical school fund heretofore created in the
79 state treasury under the provisions of section two, article
80 nineteen, chapter eleven of this code, for educationally
81 related projects.

§18B-14-2. Authorization to sell West Virginia University vacant lot located in Morgantown and biological research station located in Terra Alta.

1 (a) The board of trustees is hereby authorized and
2 empowered to sell those parcels of land situate on the
3 Chestnut Ridge Road in Monongalia County, West
4 Virginia, bounded and described as follows:

5 Beginning at a hub in the edge of the Chestnut Ridge
6 Road along the boundary formerly belonging to Sam
7 Ivill; thence with Ivill, N 10 degrees 01' W 260.04 feet
8 to a hub, corner to the lands of Blanche Sayre found in
9 Deed Book No. 481, at Page 95; thence with Sayre, S
10 89 degrees 36' E 295.45 feet to a hub, corner to W. V.
11 Board of Regents in Deed Book No. 584, at Page 1;
12 thence with W. V. Board of Regents S 0 degrees 55' W
13 255.82 feet to a hub at the northern edge of the Chestnut
14 Ridge Road; thence along the northern edge of the
15 Chestnut Ridge Road, N 89 degrees 36' W 254.00 feet
16 to the place of beginning, containing 1.61 acres, more
17 or less, as surveyed by Triad Engineering Consultants
18 on 6/27/79.

19 (b) The board of trustees is hereby further authorized
20 and empowered to sell those parcels of land situate in
21 Terra Alta, Preston County, West Virginia, bounded
22 and described as follows:

23 Those lots or parcels of real estate situated in Portland
24 District, Preston County, West Virginia, containing
25 48.28 acres recorded under Book 283, Page 217.

26 (c) Such sale shall be by public auction: *Provided,*
27 That prior to such action the board of trustees shall have
28 the property appraised by two licensed appraisers and
29 shall not sell the property for less than the average of
30 the appraisals.

31 (d) The proceeds from the sale of the property
32 referred to shall be deposited in a special revenue
33 account from which the board of trustees is hereby
34 authorized to expend the funds therefrom for develop-
35 ment of the Downtown Campus, at West Virginia
36 University, in Morgantown.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

Article

1. Financial Assistance Generally.
2. Guaranteed Student Loan Program.
3. Health Professionals Student Loan Programs.

ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.

§18C-1-1. Administration generally.

§18C-1-2. Definitions.

§18C-1-3. Transfer of obligations.

§18C-1-1. Administration generally.

1 The senior administrator jointly employed by the
2 chancellors of the board of trustees and the board of
3 directors shall, as provided in section two, article four,
4 chapter eighteen-b of this code, have a ministerial duty
5 to administer, oversee or monitor all state and federal
6 student loan, scholarship and state aid programs which
7 are administered at the state level in accordance with
8 established guidelines, in consultation with and under
9 the direction of the governing boards.

10 Such programs include, but are not limited to: The
11 guaranteed student loan program under this article,
12 which may be administered by a private nonprofit
13 agency; the medical student loan program under article
14 three of this chapter; the Underwood-Smith teacher
15 scholarship program under article twenty-one, chapter
16 eighteen of this code; the state scholarship program,
17 commonly known as the West Virginia higher education
18 grant program, under article twenty-two-b, chapter
19 eighteen of this code; the higher education student
20 assistance loan program under article twenty-two-d,
21 chapter eighteen of this code; the West Virginia higher
22 education tuition trust act under article thirty, chapter
23 eighteen of this code, which shall be administered by the
24 state treasurer as provided in said article; the state aid
25 programs for students of optometry, under article three
26 of this chapter; the state aid programs for students of
27 veterinary medicine under section six-a, article eleven,
28 chapter eighteen of this code; any reciprocal program
29 and contract program for student aid under sections
30 three and four, article four of chapter eighteen-b of this
31 code; any other state level student aid program under

32 this code; and any federal grant or contract student
33 assistance or support programs administered at the
34 state level.

§18C-1-2. Definitions.

1 The definitions used in this chapter, unless the context
2 clearly indicates otherwise, shall be the definitions
3 provided in section two, article one, chapter eighteen-b
4 of this code.

5 The term “board” or “governing board” in the singular
6 or plural as used in this chapter shall be deemed to
7 mean the senior administrator employed by the govern-
8 ing boards when a power or duty assigned to a govern-
9 ing board is delegated by it to the senior administrator.

§18C-1-3. Transfer of obligations.

1 As of the first day of July, one thousand nine hundred
2 eighty-nine, any obligations of the board of regents
3 pertaining to student loans, scholarships or state aid
4 shall be transferred and deemed the obligations of the
5 governing boards.

ARTICLE 2. GUARANTEED STUDENT LOAN PROGRAM.

§18C-2-1. Purpose of provisions of article relating to guaranteed student loan program; loan program to be administered by senior administrator of governing boards.

§18C-2-2. “Act,” “undertaking” and “obligations” defined.

§18C-2-3. Authority to buy and sell certain student obligations; undertakings not to constitute state debt; undertakings limited to available funds.

§18C-2-4. Powers and duties of senior administrator regarding loan program.

§18C-2-5. Title to property.

§18C-2-6. Acquisition of contingent interests in obligations from lending institutions; collection of delinquent obligations.

§18C-2-7. Terms of acquisitions.

§18C-2-8. Trust fund established; limitations on use of fund; duties of treasurer in connection therewith; special account created.

§18C-2-9. Construction of provisions of article relating to loan program.

§18C-2-1. Purpose of provisions of article relating to guaranteed student loan program; loan program to be administered by senior administrator of governing boards.

1 The Legislature enacts the provisions of this article
2 which relate to the establishment of the guaranteed

3 student loan program to continue and encourage
4 education of citizens of this state who are in need of
5 financial assistance, such assistance and education being
6 for the welfare of this state, and the Legislature hereby
7 declares such to be a public purpose.

8 The guaranteed student loan program established and
9 authorized by this article shall be administered by the
10 senior administrator of the board of trustees and board
11 of directors acting under their direction.

§18C-2-2. "Act," "undertaking" and "obligations" defined.

1 As used in this article, the following words and terms
2 shall have the following meanings, unless the context
3 shall indicate another or different meaning or intent:

4 (a) The words "act" or "undertaking" shall mean the
5 official act of the governing boards, or senior adminis-
6 trator acting under the direction of the boards, in
7 connection with the acquisition or disposition of all or
8 any part of obligations or interest therein which the
9 governing boards are authorized to buy or sell
10 hereunder.

11 (b) The word "obligations" shall mean those evidences
12 of debt which the governing boards may buy, sell,
13 endorse, or guarantee under the provisions of this
14 article.

**§18C-2-3. Authority to buy and sell certain student
obligations; undertakings not to constitute
state debt; undertakings limited to available
funds.**

1 In order to facilitate the education of residents in this
2 state and promote the industrial and economic develop-
3 ment of the state, the governing boards are hereby
4 authorized and empowered to buy and sell obligations
5 of students who are residents of West Virginia, and who
6 have been residents of this state for at least one year and
7 are students or have been accepted as students at state
8 supported or private institutions of higher education, or
9 vocational schools accredited by a nationally recognized
10 accrediting agency or by a state agency designated by
11 the governor and representing loans made to such
12 students who have met the requirement of financial
13 need as determined by the governing boards, such loans
14 having been made for the purpose of an education.

15 No act or undertaking of the governing boards shall
16 be deemed to constitute a debt of the state or of any
17 political subdivision thereof or a pledge of the faith and
18 credit of the state or of any such political subdivision,
19 and shall be payable solely from the funds of the
20 governing boards specifically appropriated for the
21 guaranteed student loan program. All such acts and
22 undertakings shall contain on the face thereof a
23 statement to the effect that neither the state nor the
24 governing boards shall be obligated to pay the same or
25 the interest thereon except from revenues of the
26 governing boards and that neither the faith and credit
27 nor the taxing power of the state or of any political
28 subdivision thereof is pledged to the payment of the
29 principal of or the interest on such acts and
30 undertakings.

31 All expenses incurred in carrying out the provisions
32 of this article dealing with the guaranteed student loan
33 program shall be payable solely from funds provided for
34 the purpose and no liability or obligation shall be
35 incurred by the governing boards hereunder beyond the
36 extent to which money shall have been provided under
37 the applicable provisions of this article for the guaran-
38 teed student loan program.

**§18C-2-4. Powers and duties of senior administrator
regarding loan program.**

1 The senior administrator acting under direction of the
2 governing boards is hereby authorized and empowered:

3 (1) To fix and revise from time to time and charge
4 and collect fees for its acts and undertakings;

5 (2) To establish rules concerning the acts and
6 undertakings;

7 (3) To acquire, hold and dispose of personal property
8 in the exercise of its powers and the performance of its
9 duties;

10 (4) To make and enter into all contracts and agree-
11 ments necessary or incidental to the performance of its
12 duties and the execution of its powers under this article;

13 (5) To employ in its discretion such employees as it
14 may deem necessary to carry out its powers and duties
15 as enumerated in this article;

16 (6) To receive and accept from any federal or private
17 agency, corporation, association or person, grants to be
18 expended in accomplishing the objectives of this article
19 and to receive and accept from the state, from any
20 municipality, county or other political subdivision
21 thereof and from any other source, aid or contributions
22 of either money, property, or other things of value to be
23 held, used and applied only for the purposes for which
24 such grants and contributions may be made;

25 (7) To sue and be sued as provided by law;

26 (8) To do all other acts and things necessary or
27 convenient to carry out the powers expressly granted by
28 the provisions of this article which relate to the
29 guaranteed student loan program. Nothing in this
30 article shall be construed to empower the governing
31 boards to engage in the business of banking or insu-
32 rance.

§18C-2-5. Title to property.

1 Title to any property acquired by the governing
2 boards under the provisions of this article which relate
3 to the guaranteed student loan program shall be taken
4 and held in the name of the governing boards.

§18C-2-6. Acquisition of contingent interests in obligations from lending institutions; collection of delinquent obligations.

1 With funds available to the governing boards for pur-
2 poses other than the payment of compensation to per-
3 sonnel and the lease or rental of offices or equipment, the
4 governing boards may acquire from any bank or other
5 lending institution of this state a contingent interest in
6 student obligations. The total contingent interest of the
7 governing boards on all such obligations shall not exceed
8 at any one time a sum of twelve and one-half times the
9 total funds which the governing boards can employ to
10 acquire such contingent interests. When a governing
11 board acquires any such contingent interest, it may
12 require the payment to it of a portion of the interest
13 payable upon any such obligation. In each such acqui-
14 sition, the governing board shall provide that at such
15 time as the obligation becomes delinquent, the bank or
16 other lending institution shall notify the governing
17 board forthwith and shall transfer forthwith to the

18 governing board, by assignment or otherwise, an
19 interest in such obligation equal to the contingent
20 interest of the governing board therein. The bank or
21 other lending institution and the governing board shall
22 forthwith take such steps as may be necessary to recover
23 the balance due upon any such obligation, and such
24 recovery shall be apportioned between the governing
25 board and the bank or other lending institution as their
26 respective interests may appear.

§18C-2-7. Terms of acquisitions.

1 Each governing board shall prescribe the terms,
2 conditions and limitations upon which it will acquire a
3 contingent or direct interest in any obligation and such
4 terms, conditions and limitations shall include, but
5 without limiting the generality thereof, the terms for
6 payment of principal and interest, applicable life or
7 other insurance which may be required in connection
8 with any such obligation and who shall pay the premi-
9 ums thereon, the safekeeping of assets pledged to secure
10 any such undertaking, and any and all matters in
11 connection with the foregoing as will protect the assets
12 of the governing board.

§18C-2-8. Trust fund established; limitations on use of fund; duties of treasurer in connection therewith; special account created.

1 The appropriation made to the governing boards
2 under the provisions of this article which relate to the
3 guaranteed student loan program shall be used exclu-
4 sively for the purpose of acquiring contingent or vested
5 rights in obligations which it may acquire under this
6 article, and such appropriation, payments, revenue and
7 interest, as well as other income received in connection
8 with such obligations, is hereby established as a trust
9 fund. Such fund shall be used for the purposes of the
10 governing boards other than for maintenance and
11 operation.

12 The maintenance and operating expenses of the
13 governing board shall be paid from funds specifically
14 appropriated for such purposes. No part of the trust
15 fund established under this section shall be expended for
16 such purposes.

17 The governing board shall be the trustee of the trust

18 fund hereby created, and all investments to be made
19 from the assets of such trust shall be made by the state
20 treasurer in the manner provided by law. For the
21 purposes of this article, there is hereby created in the
22 treasury of this state a special revolving account for
23 deposits and withdrawals as herein provided. The state
24 treasurer shall be the custodian of the assets of the
25 board. All payments from the accounts thereof shall be
26 made by the treasurer upon warrants issued by the
27 auditor and upon vouchers signed by such persons as are
28 designated by the governing board. A duly attested copy
29 of a resolution of the governing board designating such
30 persons shall be filed with the state treasurer as the
31 authority for issuing warrants upon such vouchers.

§18C-2-9. Construction of provisions of article relating to loan program.

1 The provisions of this article which relate to the
2 guaranteed student loan program shall be liberally
3 construed to the end that its beneficial purposes may be
4 effectuated.

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.

§18C-3-1. Medical student loan program; establishment; administration; eligibility; loan forgiveness.

§18C-3-2. State aid for students of optometry.

§18C-3-1. Medical student loan program; establishment; administration; eligibility; loan forgiveness.

1 (a) There is hereby created a medical student loan
2 program to be administered by the senior administrator.
3 The purpose of this program is to provide loans to state
4 residents who demonstrate financial need, meet academic standards and are enrolled or accepted for enrollment at the West Virginia University school of medicine, Marshall University school of medicine or the West Virginia school of osteopathic medicine.

9 (b) There is hereby established a special revolving
10 fund account under the board of trustees in the state
11 treasury to be known as the medical student loan fund
12 which shall be used to carry out the purposes of this
13 section. The fund shall consist of: (1) Amounts allocated
14 by the board of trustees from the medical education fee
15 as established by section four, article ten of chapter

16 eighteen-b of this code: *Provided*, That the board of
17 trustees may transfer to this fund for student loans an
18 amount not to exceed thirty-three percent of the total
19 collections from the medical education fee in any one
20 year; (2) appropriations provided by the Legislature;
21 (3) principal and interest repaid by medical student
22 loan recipients; and (4) other amounts which may be
23 available from external sources. Balances remaining in
24 the fund at the end of the fiscal year shall not expire
25 or revert. All costs associated with the administration
26 of this section shall be paid from the medical student
27 loan fund.

28 (c) The board shall promulgate rules for the admin-
29 istration of the medical student loan program. Such
30 rules shall include, but not be limited to, the areas of
31 academic standards, financial need loan amounts,
32 residency requirements, loan repayment requirements,
33 loan forgiveness provisions, interest rates, collection
34 procedures and financial management. Loans shall be
35 awarded at the institutional level in a manner consistent
36 with rules promulgated by the board of trustees.

37 (d) An individual shall be eligible for loan consider-
38 ation if the individual is a resident of this state as
39 defined by the trustees, demonstrates financial need,
40 meets established academic standards and is enrolled or
41 accepted for enrollment at one of the aforementioned
42 schools of medicine in a program leading to the degree
43 of medical doctor (M. D.) or doctor of osteopathy (D. O.):
44 *Provided*, That the individual has not yet received one
45 of these degrees and is not in default of any previous
46 student loan.

47 (e) The board, in conjunction with the state depart-
48 ment of health, shall determine qualifying medically
49 underserved areas and medical specialties in which
50 there is a shortage of physicians.

51 At the end of each fiscal year, any individual who has
52 received a medical student loan and who has actually
53 rendered services as a medical doctor or doctor of
54 osteopathy in this state in a designated medically
55 underserved area or in a designated medical specialty
56 in which there is a shortage of physicians, may submit
57 to the trustees a statement of service on a form provided
58 for that purpose. Upon receipt of such statement in

59 proper form, the trustees shall cancel appropriate
60 portions of the outstanding loan or loans, in accordance
61 with rules promulgated by the trustees.

§18C-3-2. State aid for students of optometry.

1 The board of trustees is hereby authorized to enter
2 into a contract with an educational institution or
3 institutions outside the state that offer training in
4 optometry, by the terms of which the board of trustees
5 may obligate itself to pay such institution, within the
6 limits of any appropriation made for the purpose, a
7 stated amount per year for each West Virginia student
8 the institution will agree to accept for training in
9 optometry.

10 The board of trustees shall each year send to any
11 institution with which such contract is made a certified
12 list of all persons applying to the trustees for training
13 in optometry who are bona fide citizens and residents
14 of this state prior to the filing of their applications, and
15 who have completed either within or without the state
16 the course of study required by such institution as a
17 prerequisite to the study of optometry.

18 Any person who receives state aid under this section
19 shall, upon graduation from an educational institution
20 for study of optometry, be required to practice optome-
21 try for a period of two years in this state, or in lieu
22 thereof shall, within sixty days from the date of
23 graduation, reimburse the board of trustees for any
24 tuition advanced to such person by the trustees.

**CHAPTER 61. CRIMES AND THEIR
PUNISHMENT.**

ARTICLE 3B. TRESPASS.

**§61-3B-4. Trespass on student residence premises or
student facility premises of an institution of
higher education.**

1 (a) For the purposes of this section:

2 (1) "Residence hall" means housing or a unit of
3 housing provided primarily for students as a temporary
4 or permanent dwelling place or abode and owned,
5 operated or controlled by an institution of higher
6 education.

7 (2) "Student facility" means a facility owned, operated
8 or controlled by an institution of higher education at
9 which alcoholic liquor or nonintoxicating beer is
10 purchased, sold or served to students enrolled at such
11 institution, but shall not include facilities at which
12 athletic events are regularly scheduled and an admis-
13 sion fee is generally charged.

14 (3) "Institution of higher education" means any state
15 university, state college or state community college
16 under the control, supervision and management of the
17 West Virginia board of trustees or West Virginia board
18 of directors, or any other university, college or institu-
19 tion of higher education in the state subject to rules for
20 accreditation under the provisions of section seven,
21 article four, chapter eighteen-b of this code.

22 (4) "Person authorized to have access to a residence
23 hall or student facility" means:

24 (A) A student who resides or dwells in the residence
25 hall; or

26 (B) An invited guest of a student who resides or
27 dwells in the residence hall; or

28 (C) A parent, guardian or person who has legal
29 custody of a student who resides or dwells in the
30 residence hall; or

31 (D) An employee of the institution of higher education
32 who is required by such employment by such institution
33 to be in the residence hall or student facility and who
34 is acting within the scope of his or her employment; or

35 (E) A delivery person, repair person or other such
36 person who is not an employee of the institution of
37 higher education but who nonetheless has a legitimate
38 commercial reason to be in the residence hall or student
39 facility and who is acting pursuant to such legitimate
40 commercial reason.

41 (b) If a person authorized to have access to a residence
42 hall or a student facility enters such residence hall or
43 student facility and by such presence or acts interferes
44 with the peaceful or orderly operation of such residence
45 hall or student facility, such person may be asked to
46 leave such residence hall or student facility. If a person

47 not authorized to have access to a residence hall or
48 student facility enters such a residence hall or student
49 facility, that person may be asked to leave such
50 residence hall or student facility notwithstanding the
51 fact that he or she has not interfered with the peaceful
52 or orderly operation of such residence hall or student
53 facility or otherwise committed a breach of the peace or
54 violated any statute or ordinance. Such request to leave
55 may be made by the president or other administrative
56 head of the institution of higher education, an employee
57 designated by the president to maintain order in the
58 residence hall or student facility, a security officer
59 appointed pursuant to the provisions of section five,
60 article four, chapter eighteen-b of this code, or a
61 municipal police officer, a sheriff or deputy sheriff, or
62 a member of the department of public safety.

63 (c) It shall be unlawful for a person to remain in a
64 residence hall or student facility after being asked to
65 leave as provided for in subsection (b) of this section.

66 (d) Any person who violates the provisions of subsec-
67 tion (c) of this section shall be guilty of a misdemeanor,
68 and, upon conviction thereof, shall be fined fifteen
69 dollars. For any second or subsequent conviction for a
70 violation occurring within one year after a previous
71 violation for similar conduct, such person shall be fined
72 an amount not to exceed one hundred dollars.

73 (e) This section shall not be construed to be in
74 derogation of the common law, nor shall the provisions
75 of this section contravene or infringe upon existing
76 statutes related to the same subject.

CHAPTER 65

(Com. Sub. for H. B. 2697—By Delegates Kiss and Basham)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-two-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to

further amend chapter eighteen of said code by adding thereto a new article, designated article twenty-two-e, all relating to higher education; providing for investment by colleges and universities which receive moneys from the eminent scholars endowment fund; providing legislative findings with respect to establishment of distinguished professors trust fund; providing definitions; establishing the distinguished professors endowment trust fund and board of directors; providing corporate powers and duties of board of regents; providing for fund administration and the creation of distinguished professorships; requiring board of regents to establish criteria for selection of distinguished professorships; authorizing solicitation of private funds; and requiring annual reports.

Be it enacted by the Legislature of West Virginia:

That section six, article twenty-two-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that chapter eighteen of said code be further amended by adding thereto a new article, designated article twenty-two-e, all to read as follows:

CHAPTER 18. EDUCATION.

Article

22A. Eminent Scholars Endowment Trust Fund Act.

22E. Distinguished Professors Endowment Trust Fund Act.

ARTICLE 22A. EMINENT SCHOLARS ENDOWMENT TRUST FUND ACT.

§18-22A-6. Administration of fund.

1 (a) The board shall use any state moneys appropriated
2 to the fund solely for the purpose of establishing
3 endowed chairs at state colleges and universities.

4 The board may allocate state appropriations to an
5 account only when private moneys have also been
6 allocated to that account. The board shall endeavor,
7 whenever possible, to allocate one dollar of state
8 appropriations for every two dollars of private moneys
9 allocated. The board may also allocate only private
10 moneys to an account.

11 Unless otherwise directed by executive order, the
12 payment of state appropriations to the fund shall be
13 made in twelve equal monthly installments, beginning
14 on the last day of the first month of the fiscal year.

15 (b) The board may, for purposes of investment,
16 commingle any moneys constituting principal received
17 from whatever source to the extent allowed under the
18 terms of the granting of such moneys and shall endeavor
19 to obtain the highest possible rate of return consistent
20 with the preservation of the principal. Consistent with
21 the terms of the appropriation, grant, gift or bequest,
22 and the provisions of this section, the board may use any
23 income, principal or combination of income and principal
24 as it may deem prudent to finance the establishment
25 of each endowed chair. However, the board shall notify
26 the recipient college or university of any money received
27 for donations to such institution.

28 (c) The board shall designate endowed chairs at the
29 various colleges and universities as it may deem
30 appropriate. For each chair so established it shall
31 designate a separate account administered by the board
32 to which moneys from the fund shall be deposited. Such
33 moneys may continue to be deemed principal for
34 purposes of investment and commingling pursuant to
35 subsection (b) of this section, and any income, loss or
36 gain, or increase or decrease in value may be allocated
37 by the board on such reasonable basis as is prescribed
38 by the board.

39 (d) For the purpose of encouraging the donation of
40 private moneys to the fund, the board may designate
41 specific chairs or specific areas of academic study as
42 subjects of challenge grants. A specific chair, or a chair
43 in a designated academic area, shall be established
44 whenever the total amount of principal and interest
45 dedicated to it reaches one hundred fifty thousand
46 dollars, with at least one half of the principal being from
47 private sources. On demand of the college or university
48 where such chair shall be established, the board shall
49 return to it the private funds in the chair's account to
50 be held in an account established in a federally insured
51 depository by such college or university. The private

52 funds heretofore deposited in accounts in the treasury
53 shall be returned to such college or university: *Provided*,
54 That regardless whether such moneys are held in the
55 fund established in section three of this article or in
56 accounts established by a college or university pursuant
57 to this subsection, the matching provisions in this article
58 shall apply: *Provided, however*, That these funds may
59 only be expended in accordance with this article.

60 When one hundred fifty thousand dollars has accum-
61 ulated in the account dedicated to any one chair, the
62 board shall notify the president of the appropriate
63 college or university that an appointment to that chair
64 shall be made.

65 (e) The president of the college or university shall use
66 at least two thirds of the income from moneys allocated
67 to an account to supplement the salary of the person
68 appointed to the endowed chair created by such account.
69 The sum paid from the fund to the person so appointed
70 shall be in addition to the contract salary except as
71 otherwise provided in this section. Such president may
72 allocate one third or any part thereof to provide or assist
73 in providing secretarial or other support services for the
74 endowed chair or may return one third or any part
75 thereof to the board with the direction that such amount
76 be added to the principal amount in the account of the
77 endowed chair from which such income was derived to
78 protect its future yield.

79 (f) Whenever the endowed chair's salary supplement
80 received pursuant to this subsection equals fifty percent
81 of the contract salary, the president of the college or
82 university may return all or a portion of the excess
83 amount to the fund, and the board shall designate a new
84 account for the purpose of establishing another chair at
85 the same institution or an existing account at the same
86 institution for receipt of the moneys so returned:
87 *Provided*, That when the principal amount of any chair
88 reaches the sum of one million dollars or more, no state
89 salary may be paid to the holder of the chair, but such
90 person's entire salary shall be paid from the interest
91 income.

92 (g) When the total allocations designated for a chair
93 from both public and private sources do not equal or
94 exceed one hundred fifty thousand dollars within five
95 years from the date of the establishment of the account,
96 the board may designate a new or existing chair as the
97 recipient of the moneys, regardless of the terms of the
98 appropriation, grant, gift or bequest, except where
99 return of the moneys is required by the terms of the
100 grant, gift or bequest.

101 (h) The governing body of the institution shall
102 promulgate rules and regulations to insure that any
103 money deposited in any federally insured depository
104 shall be backed by federally guaranteed securities to the
105 extent that the balance in any account in said depository
106 exceeds the amounts guaranteed by the Federal Depos-
107 itory Insurance Corporation or the Federal Savings and
108 Loan Insurance Corporation.

ARTICLE 22E. DISTINGUISHED PROFESSORS ENDOWMENT TRUST FUND ACT.

§18-22E-1. Legislative findings.

§18-22E-2. Definitions.

§18-22E-3. Establishment of fund; corporation to administer; board of directors.

§18-22E-4. Corporate powers.

§18-22E-5. Duties of board of regents.

§18-22E-6. Administration of fund.

§18-22E-7. Selection of distinguished professors.

§18-22E-8. Authorization to solicit private moneys; terms of grants; reports to board of directors; handling of moneys.

§18-22E-9. Annual reports.

§18-22E-1. Legislative findings.

1 The Legislature hereby finds that the essence of
2 excellence in higher education is the attraction and
3 retention of outstanding faculty; that however necessary
4 modern facilities and efficient and effective administra-
5 tion may be, the faculty provides the catalyst by which
6 all the elements of higher education combine to offer a
7 quality education. The Legislature further finds that the
8 attraction and retention of outstanding faculty at all
9 state colleges and universities, particularly those who
10 have attained distinction as scholars and teachers,
11 requires a long-term and permanent commitment from

12 both public and private sources, that private support
13 will help strengthen the commitment of citizens and
14 organizations to the promotion of excellence in higher
15 education and will provide moneys for salaries compet-
16 itive with those paid to scholars of similar distinction
17 working for this country's leading colleges and
18 universities.

19 The Legislature further finds that the appropriation
20 of public moneys to attract and retain outstanding
21 faculty and to encourage the commitment of private
22 moneys with a view toward the accumulation of such
23 moneys in a trust fund for such purposes is a proper
24 annual expense of the state, and that the establishment
25 of a distinguished professors trust fund is a proper
26 means of providing for the advancement of public
27 higher education in this state.

§18-22E-2. Definitions.

1 Whenever the following terms are used in this article,
2 they have the meanings described below:

3 (a) "Board of directors" or "board" means the
4 members of the board of directors of the distinguished
5 professors endowment trust fund;

6 (b) "Contract salary" means that portion of the
7 distinguished professor's financial compensation paid
8 from state moneys but does not include moneys from the
9 distinguished professors endowment trust fund;

10 (c) "Distinguished professorship" means the position
11 created pursuant to section six of this article to which
12 a professor is appointed; and

13 (d) "Fund" means the distinguished professors endow-
14 ment trust fund.

**§18-22E-3. Establishment of fund; corporation to admin-
ister; board of directors.**

1 There is hereby established the distinguished profes-
2 sors endowment trust fund, a public corporation, for the
3 purpose of administering the fund described in this
4 article. The board of directors of this corporation are
5 those persons appointed and serving as members of the
6 board of regents.

§18-22E-4. Corporate powers.

1 (a) The officers of the corporation are the officers of
2 the board of regents. The procedural rules of the board
3 of regents shall be used in conducting meetings.

4 (b) The corporation is hereby expressly authorized to
5 receive appropriations of public moneys and private or
6 public grants, gifts or bequests. It may hold, invest or
7 reinvest such moneys and expend the income therefrom
8 as hereinafter provided. The board may determine
9 which of the properties and moneys received by it, other
10 than public appropriations, grants, bequests and
11 specific gifts, are income and which are additions to
12 principal.

13 (c) The board is exempt from liability for any loss or
14 decrease in value of the assets or income of the fund,
15 except as such losses or decreases in value are shown
16 to be the result of bad faith, gross negligence or
17 intentional misconduct.

18 For the purpose of valuing assets, the board may use
19 any commonly accepted techniques of appraisal or
20 commonly accepted principles of accounting. No agency
21 of government nor any person, natural or corporate,
22 may receive any part of the principal or income from
23 any appropriation, grant, gift or bequest as a fee for the
24 acquisition or administration of the appropriation,
25 grant, gift or bequest.

26 (d) The board shall adhere at all times to the terms
27 and limitations of any appropriation, grant, gift or
28 bequest received. However, the board may refuse to
29 receive any grant, gift or bequest which incorporates
30 terms and limitations which they deem to be
31 unacceptable.

32 (e) The board may in its sole discretion borrow money
33 when necessary in order to avoid the untimely sale of
34 assets. At no time, however, may the board incur any
35 debt obligation for such purposes which exceeds twelve
36 months in duration.

§18-22E-5. Duties of board of regents.

1 The board of regents shall provide to the fund all
2 necessary secretarial services, office space, staff and
3 other assistance required without charge or appropria-
4 tion therefor.

§18-22E-6. Administration of fund.

1 (a) Moneys from the general revenue of the state shall
2 be appropriated by separate line item in the budget for
3 faculty endowments to be used solely for the purposes
4 of this article and of article twenty-two-a of this chapter.
5 The board shall allocate the appropriation in accordance
6 with policies which shall be adopted for this purpose,
7 and any funds allocated and not utilized to establish
8 distinguished professorships at state colleges and
9 universities under this article may be reallocated in
10 accordance with such board policies for the sole purpose
11 of establishing endowed chairs for eminent scholars at
12 state colleges and universities pursuant to article
13 twenty-two-a.

14 The board may allocate state appropriations to an
15 account only when private moneys have also been
16 allocated to that account and shall require a minimum
17 of one private dollar for each dollar of allocation from
18 state appropriation. The board shall endeavor, whenever
19 possible, to allocate one dollar of state appropriations for
20 every two dollars of private moneys allocated. The board
21 may also allocate only private moneys to an account.

22 Unless otherwise directed by executive order, the
23 payment of state appropriations to the fund shall be
24 made in twelve equal monthly installments, beginning
25 on the last day of the first month of the fiscal year.

26 (b) The board may, for purposes of investment,
27 commingle any moneys constituting principal received
28 from whatever source to the extent allowed under the
29 terms of the granting of such moneys and shall endeavor
30 to obtain the highest possible rate of return consistent
31 with the preservation of the principal. Consistent with
32 the terms of the appropriation, grant, gift or bequest,
33 and the provisions of this section, the board may use any

34 income, principal or combination of income and princi-
35 pal as it may deem prudent to finance the establishment
36 of each distinguished professorship.

37 (c) The board shall designate distinguished professor-
38 ships at the various colleges and universities as it
39 considers appropriate. For each professorship so
40 established it shall designate a separate account
41 administered by the board to which moneys from the
42 fund shall be deposited. Such moneys may continue to
43 be considered principal for purposes of investment and
44 commingling pursuant to subsection (b) of this section,
45 and any income, loss or gain, or increase or decrease in
46 value may be allocated by the board on such reasonable
47 basis as is prescribed by the board.

48 (d) For the purpose of encouraging the donation of
49 private moneys to the fund, the board may designate or
50 specify areas as subjects of challenge grants. A specific
51 professorship in a designated academic area shall be
52 established whenever the total amount of principal and
53 interest dedicated to it reaches thirty thousand dollars,
54 with at least one half of the principal being from private
55 sources.

56 When thirty thousand dollars has accumulated in the
57 account dedicated to any one professorship, the board
58 shall notify the president of the appropriate college or
59 university that an appointment to that professorship
60 may be made.

61 (e) The president of the college or university may use
62 the income and up to ten percent of that portion of the
63 principal of moneys allocated to an account that is in
64 excess of the amount that is the sum of the total state
65 appropriation to that account plus an equal amount
66 contributed from private sources. The president of the
67 college or university may use such moneys to supple-
68 ment the salary of the person appointed to the distin-
69 guished professorship created by such account. The sum
70 paid from the fund to the person so appointed shall be
71 in addition to the contract salary except as otherwise
72 provided in this section. Such president may allocate an
73 additional ten percent or any part thereof of such excess

74 principal to provide or assist in providing secretarial or
75 other support services for the distinguished
76 professorship.

77 (f) Whenever the account for a distinguished profes-
78 sorship equals one hundred fifty thousand dollars, the
79 board, on recommendation of the president of the college
80 or university, may convert the account to an eminent
81 scholars account pursuant to the provisions of article
82 twenty-two-a of this chapter: *Provided*, That when the
83 principal amount of any account reaches the sum of one
84 million dollars or more, no state salary may be paid to
85 the holder of the professorship, but such person's entire
86 salary shall be paid from the interest income.

87 (g) When the total allocations designated for a
88 distinguished professorship from both public and
89 private sources do not equal or exceed thirty thousand
90 dollars within five years from the date of the establish-
91 ment of the account, the board may designate a new or
92 existing professorship at the institution wherein the
93 fund was established as the recipient of the moneys,
94 regardless of the terms of the appropriation, grant, gift
95 or bequest, except where return of the moneys is
96 required by the terms of the grant, gift or bequest.

§18-22E-7. Selection of distinguished professors.

1 The board of regents shall establish criteria for the
2 selection of persons to be appointed as distinguished
3 professors established pursuant to this article. Such
4 professorships may be filled from either within or
5 outside the faculty of the college or university, and
6 outstanding teaching ability shall be part of the criteria
7 for appointment. The board may establish criteria
8 which exceeds the provisions of this section.

**§18-22E-8. Authorization to solicit private moneys; terms
of grants; reports to board of directors;
handling of moneys.**

1 Each college and university, and each dean and
2 department chair within each college or university, is
3 hereby authorized to solicit moneys for distinguished
4 professorships pursuant to this article. In order to

5 maximize the effective use of moneys raised, persons or
6 institutions soliciting moneys shall endeavor, insofar as
7 is possible, to secure private grants, gifts or bequests
8 which are unlimited as to their use. All persons and
9 institutions engaged in soliciting moneys shall apprise
10 the board of their actions and provide periodic reports,
11 at least once each fiscal year, regarding the amounts
12 secured and, upon receipt of any moneys, shall forward
13 them forthwith to the board for deposit in accordance
14 with section six of this article.

§18-22E-9. Annual reports.

1 The board shall make an annual report to the joint
2 committee on government and finance of the West Virginia
3 Legislature no later than the first day of December of each
4 year setting forth with specificity the sources of all moneys,
5 the allocations of all moneys and such other information
6 as the joint committee may require.

CHAPTER 66

(H. B. 2866—By Delegates Farley and Houvouras)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend article twenty-four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven, relating to fees and other money collected at state institutions of higher education; providing for an additional fee to be imposed upon health sciences students at West Virginia University, Marshall University School of Medicine and West Virginia School of Osteopathic Medicine for offsetting the cost of health sciences education at these schools of medicine; and providing for special accounts in the state treasury and appropriations by the Legislature.

Be it enacted by the Legislature of West Virginia:

That article twenty-four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eleven, to read as follows:

ARTICLE 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

***§18-24-11. Health professions education fee.**

1 In addition to the fees specifically provided for in
2 sections one, one-a, one-b and one-c of this article, all
3 students enrolled for credit at the West Virginia
4 University health sciences center, Marshall University
5 School of Medicine and the West Virginia School of
6 Osteopathic Medicine, shall pay a health professions
7 education fee. The board of trustees shall fix the amount
8 of the fee and may from time to time change that
9 amount. The fee imposed by this section is in addition
10 to the maximum fees allowed to be collected under the
11 provisions of section one of this article and is not limited
12 thereby. Refunds of the fee may be made in the same
13 manner as any other fee collected at state institutions
14 of higher education. All moneys collected from the
15 health professions education fees shall be deposited in
16 a special revenue account for the respective school from
17 which collection is made, said accounts shall be hereby
18 created in the state treasury for the West Virginia
19 health sciences center, Marshall University School of
20 Medicine, and the West Virginia School of Osteopathic
21 Medicine. The moneys in such fund shall be used to
22 offset general operating costs for health sciences
23 education in this state. Before the first day of July of
24 each year, the board of trustees shall provide the
25 legislative auditor with a report of the projected fee
26 collections during the next fiscal year and a report of
27 fee expenditures for the preceding fiscal year.

*Clerk's Note: Similar provisions of this section also appear in S.B. 420, §18B-10-4a, which passed subsequent to this act.

CHAPTER 67

(H. B. 2293—By Delegate Ashcraft)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-eight, chapter eighteen of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to standardized testing requirements of nonpublic schools.

Be it enacted by the Legislature of West Virginia:

That section three, article twenty-eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 28. PRIVATE, PAROCHIAL OR CHURCH SCHOOLS, OR SCHOOLS OF A RELIGIOUS ORDER.

§18-28-3. Standardized testing requirements.

1 Each private, parochial or church school or school of
2 a religious order or other nonpublic school electing to
3 operate under this statute in lieu of the approval
4 requirements set forth as part of section one, article
5 eight, chapter eighteen, exemption A shall administer
6 on an annual basis during each school year to every
7 child enrolled therein between the ages of seven and
8 sixteen years either the comprehensive test of basic
9 skills, the California achievement test, the Stanford
10 achievement test or the Iowa tests of basic skills/tests
11 of achievement and proficiency, which test will be
12 selected by the chief administrative officer of each
13 school in the subjects of English, grammar, reading,
14 social studies, science and mathematics; and shall be
15 administered under standardized conditions as set forth
16 by the published instructions of the selected test.

17 Each child's testing results and the school composite
18 test results shall be made available to such child's
19 parents or legal guardians. Upon request of a duly
20 authorized representative of the West Virginia depart-
21 ment of education, the school composite test results shall
22 be furnished by the school or by a parents organization
23 composed of the parents or guardians of children
24 enrolled in said school to the state superintendent of
25 schools.

26 Each school to which this article applies shall:

27 (a) Establish curriculum objectives, the attainment of
28 which will enable students to develop the potential for
29 becoming literate citizens.

30 (b) Provide an instructional program that will make
31 possible the acquisition of competencies necessary to
32 become a literate citizen.

33 If such school composite test results for any single
34 year for English, grammar, reading, social studies,
35 science and mathematics fall below the fortieth per-
36 centile on the selected tests, the school as herein described
37 shall initiate a remedial program to foster achievement
38 above that level. If after two consecutive calendar years
39 school composite test results are not above the fortieth
40 percentile level, attendance at the school may no longer
41 satisfy the compulsory school attendance requirement
42 exemption of exemption K, section one, article eight,
43 chapter eighteen, until such time as the percentile
44 standards herein set forth are met.

CHAPTER 68

(Com. Sub. for S. B. 553—By Senators Tucker,
Mr. President, J. Manchin and Warner)

[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-one, relating to the governing boards of state institutions of higher education; authorizing the boards to enter into contracts and agreements with corporations created to facilitate research and development activities for such state institutions of higher education; setting forth the terms and conditions of such contracts and agreements; and providing for audits of such corporations.

Be it enacted by the Legislature of West Virginia:

That chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-one, all to read as follows:

**ARTICLE 31. RESEARCH AND DEVELOPMENT AGREEMENTS
FOR STATE INSTITUTIONS OF HIGHER
EDUCATION.**

§18-31-1. Definitions.

§18-31-2. Legislative findings and purpose.

§18-31-3. Boards authorized to contract with corporations; characteristics of corporations.

§18-31-4. Agreement; required provisions.

§18-31-5. Audit.

§18-31-6. Conflicts of interest.

§18-31-7. No waiver of sovereign immunity.

§18-31-8. Not obligation of the state.

§18-31-9. Sections and provisions severable.

§18-31-1. Definitions.

The following words used in this article shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) "Agreement" means any agreement being entered into between a governing board and a corporation pursuant to section four of this article.

(b) "Corporation" means a nonstock, not-for-profit corporation established under the general corporation laws of the state which meets the description presented by section three of this article.

(c) "Corporate directors" means the board of directors of a corporation.

§18-31-2. Legislative findings and purpose.

1 (a) The Legislature finds and determines that the
2 future economic development in the state will depend in
3 part upon research developed at the state institutions of
4 higher education, and enhanced research opportunities
5 for state institutions of higher education will promote
6 the general economic welfare of the citizens of the state.
7 In order to enhance the competitive position of state
8 institutions of higher education in the current environ-
9 ment for research and development, expenditures for
10 equipment and material for research projects must be
11 handled in an expeditious fashion, and the acquisition
12 and utilization of research grants can be simplified and
13 expedited through the utilization of corporations.

14 (b) The interest of the citizens of the state will be best
15 met by agreements entered into and carried out by the
16 governing boards and corporations to provide research
17 assistance for state institutions of higher education.
18 Therefore, in order to facilitate research and develop-
19 ment grants and opportunities for state institutions of
20 higher education, it is appropriate to authorize the
21 governing boards to contract with corporations organ-
22 ized for the purpose of providing such services to state
23 institutions of higher education.

**§18-31-3. Boards authorized to contract with corpora-
tions; characteristics of corporations.**

1 Each governing board for a state institution of higher
2 education is hereby authorized to enter into agreements
3 and any other contractual relationships with one or
4 more corporations formed with respect to such state
5 institution of higher education, but only if each such
6 corporation meets the following descriptions:

7 (a) The president and the president's appointees from
8 the institution shall constitute a majority of the voting
9 corporate directors.

10 (b) The corporation must be organized as a nonprofit,
11 nonstock corporation under the general corporation laws
12 of the state exclusively for charitable, educational or
13 scientific purposes within the meaning of section
14 501(c) of the Internal Revenue Code of 1986, as
15 amended, to foster and support research at the respec-
16 tive state institution of higher education and to provide
17 evaluation, development, patenting, management and
18 marketing services for inventions of the faculty, staff
19 and students of such state institution of higher
20 education.

21 (c) The meetings of the corporate directors shall be
22 subject to the provisions of section three, article nine-
23 a, chapter six of this code.

24 (d) Upon dissolution of the corporation, the assets of
25 the corporation shall be transferred to such entity as the
26 appropriate governing board shall designate for the
27 benefit of the state institution of higher education:

28 *Provided*, That such recipient shall be an organization
29 operated exclusively for charitable, educational or
30 scientific purposes as shall at such time qualify as an
31 exempt organization under section 501(c)(3) of the
32 Internal Revenue Code of 1986, as amended.

§18-31-4. Agreement; required provisions.

1 (a) Notwithstanding section ten, article three, chapter
2 twelve of this code or any other provision of law to the
3 contrary, each governing board is hereby authorized to
4 enter into an agreement with a corporation, which
5 agreement shall be for the benefit of such state
6 institution of higher education and contain the following
7 provisions, subject to further specification as shall be
8 mutually agreed upon by the appropriate governing
9 board and the corporation:

10 (1) On the effective date of the agreement, the
11 corporation shall be charged with the responsibility of
12 serving as fiscal agent for sponsored projects conducted
13 by the faculty, staff and students of the state institution
14 of higher education, and grants shall be accepted by the
15 corporation on behalf of the institution and assigned to
16 the corporation for fiscal management.

17 (2) The corporation shall provide evaluation, develop-
18 ment, patenting, licensing, management and marketing
19 services for inventions, processes, trademarks, copy-
20 rights or any other intellectual property developed by
21 faculty, staff and students of any state institution of
22 higher education.

23 (3) The corporation shall have the right to determine
24 the application of the proceeds from any invention,
25 process, trademark, copyright or any other intellectual
26 property developed by the faculty, staff or students of
27 a state institution of higher education among the
28 corporation, the inventor or developer, and the
29 institution.

30 (4) The corporation shall have such additional respon-
31 sibilities related to the administration of research and
32 development at the state institution of higher education
33 as are necessary or desirable to facilitate the develop-
34 ment of research at the institution.

35 (b) Upon termination of the agreement, the funds or
36 grants paid or held by the corporation shall be paid to
37 the state institution of higher education or its designee
38 as the appropriate governing board shall direct.

39 (c) A corporation may utilize both corporation em-
40 ployees and personnel of the state institution of higher
41 education: *Provided*, That the corporation may pay the
42 costs incurred by the state institution of higher educa-
43 tion including personnel funded on grants and contracts,
44 fringe benefits of personnel funded on grants and
45 contracts, administrative support costs and other costs
46 which may require reimbursement and may include as
47 costs any applicable overhead and fringe benefit
48 assessments necessary to recover the costs expended by
49 the state institution of higher education pursuant to the
50 terms of the agreement, it being the intention that a
51 board may be reimbursed for expenses incurred by it
52 pursuant to the agreement.

§18-31-5. Audit.

1 The operations of the corporation shall be subject to
2 an audit by an independent auditor.

§18-31-6. Conflicts of interest.

1 Notwithstanding any other provision of this code to
2 the contrary, officers and employees of a governing
3 board and the affected state institution of higher
4 education may hold appointments to offices of the
5 corporation and be corporate directors or officers or
6 employees of other entities contracting with either the
7 corporation or a governing board of a state institution
8 of higher education. The executive director of the
9 corporation shall have dual appointment with the state
10 institution of higher education. The governing board of
11 a state institution of higher education and the corporate
12 directors must be informed of such appointments
13 annually.

§18-31-7. No waiver of sovereign immunity.

1 Nothing contained in this article shall be deemed or
2 construed to waive or abrogate in any way the sovereign

- 3 immunity of the state or to deprive a governing board
4 of a state institution of higher education, a state
5 institution of higher education or any officer or em-
6 ployee thereof of sovereign immunity.

§18-31-8. Not obligation of the state.

- 1 Obligations of a corporation shall not constitute debts
2 or obligations of a state institution of higher education,
3 the governing board thereof or the state.

§18-31-9. Sections and provisions severable.

- 1 The sections of this article, and the provisions and
2 parts of said sections, are severable, and it is the
3 intention to enact the whole or any part of the powers
4 provided for in this article, and, if any of said sections,
5 or the provisions or parts of any said sections, or the
6 application thereof to any person or circumstance, are
7 for any reason held unconstitutional or invalid, it is the
8 intention that the remaining sections of this article, and
9 the remaining provisions or parts of any said sections,
10 shall remain in full force and effect.

CHAPTER 69

(Com. Sub. for H. B. 2616—By Delegates Whitt and Reid)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact section nine, article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to school principals; providing for the assignment of principals to each school; and restricting the assignment of teaching duties.

Be it enacted by the Legislature of West Virginia:

That section nine, article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-9. Duties and responsibilities of school principals; assistant principals.

1 Upon the recommendation of the county superintend-
2 ent of schools, the county board of education shall
3 employ and assign, through written contract, public
4 school principals who shall supervise the management
5 and the operation of the school or schools to which they
6 are assigned. Such principals shall hold valid adminis-
7 trative certificates appropriate for their assignments.

8 Under the supervision of the superintendent and in
9 accordance with the rules and regulations of the county
10 board of education, the principal shall assume adminis-
11 trative and instructional supervisory responsibility for
12 the planning, management, operation and evaluation of
13 the total educational program of the school or schools to
14 which he is assigned.

15 The principal may submit recommendations to the
16 superintendent regarding the appointment, assignment,
17 promotion, transfer and dismissal of all personnel
18 assigned to the school or schools under said principal's
19 control. Such recommendation shall be submitted in
20 writing as prescribed by the superintendent.

21 The principal shall perform such other duties as may
22 be assigned by the superintendent pursuant to the rules
23 and regulations of the county board of education.

24 Upon recommendation of the county superintendent of
25 schools, the county board of education shall, when
26 needed, employ and assign, through written contract,
27 assistant principals who shall work under the direction
28 of the school principal. Such assistant principals shall
29 hold valid administrative certificates appropriate for
30 their assignments.

31 On or before the first day of July, one thousand nine
32 hundred eighty-nine and continuing thereafter, each
33 county board of education shall assign a certificated
34 principal to each school and no principal may be
35 assigned more than two schools: *Provided, That where*

36 enrollment exceeds four hundred students there will be
37 no additional schools assigned to that principal.

38 No principal assigned to more than one school may be
39 assigned any teaching duties except on a temporary
40 emergency basis. No county shall have more teaching
41 principalships or multi-school principalships than was
42 present on the first day of January, one thousand nine
43 hundred eighty-eight.

44 On or before the first day of July, one thousand nine
45 hundred ninety-three and continuing thereafter, each
46 county board of education shall employ a full-time
47 supervising principal at each school whose net enrol-
48 lment equals or exceeds one hundred seventy students.
49 A principal assigned to a school with a net enrollment
50 equal to or greater than one hundred seventy students
51 may not be assigned any teaching duties except on a
52 temporary emergency basis. When a principal is
53 assigned on a full-time basis to a school whose net
54 enrollment is more than seventy-five students but less
55 than one hundred seventy students, such principal shall
56 have a minimum of twenty hours per week for nonteach-
57 ing duties. A principal assigned on a full-time basis to
58 a school with seventy-five students or less shall have a
59 minimum of ten hours per week for nonteaching duties:
60 *Provided*, That nothing in this section prohibits a county
61 board of education from assigning a full-time supervis-
62 ing principal to a school with a net enrollment of less
63 than one hundred seventy students.

64 Nothing contained in this section shall be construed
65 to reduce or limit the rights and privileges of principals
66 and assistant principals as teachers under the provisions
67 of section one, article one, chapter eighteen of the code
68 of West Virginia as amended; section one, article one,
69 chapter eighteen-a; and other provisions of this code:
70 *Provided*, That on or before the first day of July, one
71 thousand nine hundred ninety-three, the state board of
72 education shall not deny a county board of education the
73 right to place a principal in a school with less than one
74 hundred seventy students.

CHAPTER 70

(Com. Sub. for S. B. 183—By Senators Whitlow and M. Manchin)

[Passed April 4, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, ten, eleven, twenty-two and thirty, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the registration of voters; changing the date by which the county clerk must commence the cancellation of registrations; setting forth the basis for cancellation of registrations; restating the misdemeanor crime for the failure of election officials to perform duties and incorporating the penalty therefor by reference; changing the hours of registration within the county clerk's office; authorizing the county commission to appoint registrars for purposes other than biennial checkups; setting forth the minimum amount of hours in which temporary registration offices must remain open; authorizing the county commission to establish additional temporary registration offices; and expanding the time in which incomplete postcard registrations may be corrected.

Be it enacted by the Legislature of West Virginia:

That sections three, ten, eleven, twenty-two and thirty, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. REGISTRATION OF VOTERS.

- §3-2-3. Registration, cancellation and reinstatement; and criminal penalty.
- §3-2-10. County commission's duties and powers; hours during registration period.
- §3-2-11. Appointment of registrars; qualifications and duties.
- §3-2-22. Registration in clerk's office; cancellation of registrations of deceased persons; temporary registration offices.
- §3-2-30. Time of registration prior to election; changes.
- §3-2-3. **Registration, cancellation and reinstatement; and criminal penalty.**

- 1 A permanent registration system shall hereby be

2 established which shall be uniform throughout the state
3 and all of its subdivisions. No voter so registered shall
4 be required to register again for any election while he
5 continues to reside at the same address, or, having
6 moved from such address, is properly transferred
7 according to the provisions of section twenty-seven or
8 forty-one of this article, unless his registration is
9 canceled as provided in this article.

10 Within one hundred and twenty days following any
11 election, the clerk of the county commission shall, as
12 evidenced by the presence or absence of signatures on
13 the pollbooks for such election, correct any errors or
14 omissions on the voter registration records pertaining to
15 the election resulting from the poll clerks erroneously
16 checking or failing to check the registration records as
17 required by the provisions of section thirty-four, article
18 one of this chapter.

19 Within one hundred twenty days following the general
20 election, the clerk shall cancel the registration of each
21 person who has failed to vote at least once in any
22 statewide, special or municipal election held after the
23 statewide general election held four years previously as
24 indicated by his or her registration record. Any clerk
25 failing to perform such duty is guilty of a misdemeanor
26 as provided in section thirty-six of this article. The clerk
27 of the county commission shall notify by mail each
28 person whose registration is canceled for failure to vote.
29 The notice shall inform the voter that:

30 (a) In order to be reinstated he or she must:

31 (1) Register again, either in person at the county
32 clerk's office or by mail, according to the provisions of
33 section three or forty-one of this article; or

34 (2) Execute and file an affidavit of reinstatement of
35 registration at the same residence address not later than
36 thirty days before the next primary or general election,
37 except that reinstatement by affidavit shall not be
38 permitted if the voter registration in question was
39 canceled because the voter failed to make his first vote
40 in person as required by the provisions of subsection (e),
41 section forty-one of this article; and

42 (b) That the last day to register to vote in any election
43 is thirty days before that election.

44 A blank copy of the affidavit form shall be included
45 with the notice to the voter.

46 The clerk shall replace the registration card of any
47 voter who files a completed affidavit of reinstatement in
48 the registration records.

§3-2-10. County commission's duties and powers; hours during registration period.

1 Subject to the authority of the secretary of state, the
2 county commission shall be chief registration authority
3 in each respective county and all subdivisions therein,
4 and shall supervise the county clerk and registrars in
5 the performance of their respective duties.

6 The county commission shall have power on its own
7 motion to summon and to interrogate any person
8 concerning the registration of voters, to investigate any
9 irregularities in registration, to summon and examine
10 witnesses, to require the production of any relevant
11 books and papers, and to conduct hearings on any
12 matters relating to registration of voters.

13 Notwithstanding any provision of any other section of
14 this code, the office of the clerk of the county commission
15 shall remain open from 9:00 a.m. until 8:00 p.m. on the
16 Friday and Monday, and from 9:00 a.m. until 5:00 p.m.
17 on the Saturday prior to the close of the registration
18 periods for statewide primary and general elections.

§3-2-11. Appointment of registrars; qualifications and duties.

1 The county commission of each county may appoint
2 registrars to make a biennial checkup or to conduct
3 other authorized registration activities allowed by this
4 article. Two persons of opposite political parties shall
5 together serve as registrars for from one to ten
6 precincts.

7 No person is eligible to be appointed a registrar, or
8 in any way act as such, if he or she has been convicted
9 of a felony; or if he or she holds, or is a candidate for,

10 any elective or appointive office; or is a public employee,
11 under the laws of this state or of the United States; or
12 cannot read or write the English language. If any
13 registrar fails or refuses to serve or is properly
14 dismissed, the vacancy shall be filled either by the
15 county commission or by the clerk thereof in vacation,
16 in the manner provided for the appointment of regis-
17 trars. Each registrar, before entering upon the dis-
18 charge of his or her duties, shall take an oath that he
19 or she will perform the duties of the office to the best
20 of his or her ability, which oath shall be filed in the
21 office of the clerk of the county commission.

22 An equal number of such registrars shall be selected
23 from the two major political parties. The county
24 commission shall, at least four weeks prior to making
25 such appointment, request the county executive commit-
26 tee of each of the two political parties to submit a list
27 of names, equal to one half of the total number to be
28 appointed, of persons qualified to act as registrars; and
29 the county commission shall, if such lists are submitted,
30 appoint the qualified persons recommended and shall
31 notify each registrar of his or her appointment. Every
32 list so presented shall be filed and preserved for one
33 year by the clerk of the county commission. Any and
34 every act performed by any registrar under the
35 provisions of this article is void unless performed in
36 conjunction with a registrar of the opposite political
37 party at the same time and place.

38 Before acting, all such registrars shall attend a
39 session, or sessions, of instruction by the clerk of the
40 county commission, or some person designated by him
41 or her, concerning the performance of their duties.

42 Immediately following such instruction the clerk of
43 the county commission shall give to the registrars a copy
44 of the laws and regulations relating to registration of
45 voters, written instructions for performing their duties,
46 and all necessary forms and other supplies, including
47 maps with municipal precincts superimposed over
48 county precincts in cases where boundaries differ, and
49 a certified list of all registered voters within the
50 precinct or precincts for which such registrars were

51 appointed, upon such form as may be prescribed by the
52 secretary of state. Registrars appointed for the purpose
53 of conducting a biennial checkup shall proceed together
54 to make a house-to-house canvass in their precincts as
55 allowed by section twenty-one of this article. Each
56 biennial checkup shall be completed at least sixty days
57 before the statewide primary election following the
58 appointment of the registrars. In making the checkup
59 the registrars shall not reregister any person who is
60 already registered in such precinct, but shall determine
61 whether or not such person is duly registered and
62 qualified to vote therein. Registrars may be appointed
63 under the provisions of this article to conduct registra-
64 tion at temporary registration offices established
65 throughout the county.

66 The registrars shall require valid identification and
67 proof of age of each registrant, and shall inquire and
68 attempt to establish whether the registrant resides
69 within a municipality. The registrars shall have the
70 registrant complete the voter registration form for
71 county-state permanent registration and if the person
72 resides within the limits of a municipality for which a
73 separate registration file is kept, the registrars shall
74 also have the registrant complete the form for municipal
75 registration.

**§3-2-22. Registration in clerk's office; cancellation of
registrations of deceased persons; temporary
registration offices.**

1 The clerk or any deputy clerk of the county commis-
2 sion may register any qualified person as a voter. The
3 clerk or deputy shall first require valid identification
4 and proof of age, and inquire and attempt to establish
5 whether the voter resides within the limits of a
6 municipality using the map provided by the municipal-
7 ity in accordance with section five, article one of this
8 chapter. The clerk or deputy clerk shall have the person
9 registering fill in and complete the prescribed voter
10 registration form for county-state permanent registra-
11 tion. If the person resides within the limits of a
12 municipality for which a separate registration file is
13 kept, the clerk or deputy shall also have the person

14 complete the form for municipal registration. The
15 registrant shall sign the form or forms under oath or
16 affirmation. The clerk, upon proper proof, may alter,
17 amend, correct or cancel the registration record of any
18 voter. Such registration or alteration, amendment,
19 correction or cancellation of registration records shall be
20 carried on throughout the year.

21 During the biennial checkup period of every even-
22 numbered year, the clerk or deputy clerk shall visit
23 every public or private institution, excluding hospitals,
24 in which reside aged, infirm, disabled or chronically ill
25 persons, and every high school to register qualified
26 voters. The clerk shall establish at least one temporary
27 registration office per magisterial or tax district,
28 whichever is more numerous, to register qualified
29 persons or to alter, amend, correct or cancel such
30 registration records. Temporary registration offices
31 shall be open a minimum of four hours each day on at
32 least three days, including one Saturday and one
33 evening, not more than sixty days nor less than thirty
34 days prior to each primary and each general election.
35 The hours shall be posted and advertised as a Class III-
36 O legal advertisement with the publication area being
37 the magisterial district. Additional temporary offices
38 may be established throughout the county for the public
39 convenience. The clerk of the county commission shall
40 also solicit public service advertising of such registra-
41 tion offices and times on radio, television and newspap-
42 ers serving that county.

43 Within fifteen days following receipt of a death
44 certificate from the state or local registrar of vital
45 statistics or the publication in a newspaper of the county
46 an obituary clearly identifying a deceased person by
47 name, residence and age, the clerk of the county
48 commission shall cancel the voter registration, if any, of
49 the person shown to be deceased by such certificate or
50 obituary.

51 Sixty days prior to a general election, the clerk of the
52 county commission shall review each death certificate
53 received by him and shall cancel the voter registration,
54 if any, of each deceased person whose voter registration

55 has not previously been canceled. By the forty-fifth day
56 prior to a general election each clerk of a county
57 commission shall certify to the secretary of state that he
58 has performed the duty required by this paragraph.

59 If found necessary, the county commission may order
60 and direct the clerk of the county commission to
61 maintain additional office hours in the evening or at
62 other proper times and places for accommodation of
63 voter registration.

§3-2-30. Time of registration prior to election; changes.

1 No person may vote in an election when he has
2 registered or his voter registration has been altered,
3 amended or corrected within a period of thirty days next
4 preceding such election: *Provided*, That postcard
5 registrations containing incomplete information which
6 are received by the county clerk no later than the close
7 of registration may be corrected within four days after
8 the close of registration if such information is available.
9 This inhibition shall not prevent, during such period of
10 thirty days, additional registrations and changes in
11 voter registrations with reference to future elections. If,
12 during such period of thirty days preceding an election,
13 a voter is registered or his voter registration is altered,
14 amended or corrected, he shall not be permitted or
15 qualified to vote at such election.

CHAPTER 71

(Com. Sub. for S. B. 186—By Senator Chafin)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five, five-c and ten,
article three, chapter three of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, all
relating to voting by absentees; necessity for physician's
and chiropractor's statements deleted in certain cases;
more than four consecutive absentee ballots voted by
mail as a result of being out of the county to be
challenged; exceptions; authorizing county commissions

to adopt a policy extending emergency absentee voting to health care facilities within an adjacent county or within thirty-five miles of the county seat; extending the time in which persons admitted to health care facilities may apply to vote an emergency absent voter's ballot; changing the method by which emergency absent voter's ballots may be applied for and voted; and updating certain terminology.

Be it enacted by the Legislature of West Virginia:

That sections five, five-c and ten, article three, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-5. Voting an absent voter's ballot by mail; federal postcard application.

§3-3-5c. Procedures for voting an emergency absent voter's ballot by qualified voters.

§3-3-10. Challenging of absent voters' ballots.

§3-3-5. Voting an absent voter's ballot by mail; federal postcard application.

1 A person desiring to vote an absent voter's ballot by
2 mail may, on or after the first day of January prior to
3 the date of any primary, general or special election in
4 the case of any person outside the continental limits of
5 the United States and not more than eighty-four days
6 prior to the date of any primary, general or special
7 election in the case of any other person, make applica-
8 tion by mail to the clerk of the circuit court of the county
9 in which he is registered to vote for an official absent
10 voter's ballot or ballots to be voted at such election. The
11 clerk of the circuit court shall not honor any such
12 application for an absent voter's ballot received by him
13 after the fourth day next preceding the date of the
14 election. In computing the fourth day, the day of
15 conducting the election shall be excluded.

16 When a clerk receives a completed application to vote
17 an absent voter's ballot by mail in more than one
18 election in an election year from an applicant eligible

19 to vote absentee under subdivision (2), section one of this
20 article, the clerk shall, if all legal requirements are met,
21 forward to the applicant the appropriate ballot or
22 ballots for each election held within that jurisdiction.
23 The application to be used by persons who wish to vote
24 an absent voter's ballot by mail shall be prescribed by
25 the secretary of state and shall be in substantially the
26 following form:

27 "APPLICATION FOR VOTING AN ABSENT
28 VOTER'S BALLOT BY MAIL

29 KNOWING THAT I CAN BE FINED NOT MORE
30 THAN ONE THOUSAND DOLLARS OR IMPRI-
31 SONED IN THE COUNTY JAIL FOR A PERIOD OF
32 NOT MORE THAN ONE YEAR OR BOTH SUCH
33 FINE AND IMPRISONMENT FOR KNOWINGLY
34 MAKING A FALSE STATEMENT OR REPRESEN-
35 TATION HEREIN, I, _____,
36 hereby declare that I am now, or will have been, a
37 resident of the state of West Virginia for twelve months,
38 and of the county of _____, for thirty days,
39 next preceding the date of the ensuing election to be
40 held on the _____ day of _____,
41 19____; that I now reside at _____

42 (give full address)
43 in the magisterial district of _____, in said
44 county; that I am a duly qualified voter entitled to vote
45 in such election; that I am registered in the precinct of
46 my residence as provided by law; that I am registered
47 as a _____; (state political party if ballot is
48 for primary election) and that (strike out the numbered
49 paragraphs not applicable and complete the numbered
50 paragraph which is applicable):

51 (1) I will be unable to vote in person at the polls on
52 election day because of _____, (state partic-
53 ulars of physical disability, illness or injury).

54 (2) I anticipate commitment to a hospital, institution
55 or other confinement on or about the _____
56 day of _____, 19____, for the following
57 medical reasons _____, as evidenced below
58 by the statement of a duly licensed physician or

59 chiropractor, and by reason thereof will not be able to
60 vote in person at the polls in such election.

61 (3) I expect to be absent from the aforementioned
62 county in which I am registered to vote during the
63 entire time the polls are open in such election, and I am
64 (check one applicable):

65 ☐ A member of the armed forces in the active service.

66 ☐ A spouse or dependent of a member of the armed
67 forces in active service.

68 ☐ A member of the merchant marine of the United
69 States.

70 ☐ A spouse or dependent of a member of the mer-
71 chant marine of the United States.

72 ☐ A citizen of the United States temporarily residing
73 outside the territorial limits of the United States and the
74 District of Columbia.

75 ☐ A spouse or dependent residing with or
76 accompanying a citizen of the United States temporarily
77 residing outside the territorial limits of the United
78 States and the District of Columbia.

79 (4) I am required to be absent from the aforementi-
80 oned county in which I am registered during the entire
81 time the polls are open in such election for the reason
82 or reasons hereafter stated; I am not in any of the
83 categories referred to in paragraph (3) above; I am
84 required to be absent from said county during regular
85 business hours of the clerk of the circuit court of said
86 county throughout the period or throughout the re-
87 mainder of the period of voting an absent voter's ballot
88 by personal appearance at said office.

89

90

91

92

(state reason or reasons for required
absence from county on election.)

93 (5) I have been appointed _____

94

95

(state whether an election
commissioner or poll clerk)

96 in precinct No. _____ in said election, which
97 precinct is not the precinct in which I am registered to
98 vote.

99 (6) I will be incarcerated in the county or city jail or
100 other detention facility located in this county on election
101 day but am not under sentence of treason, bribery or a
102 felony, as evidenced below by the statement of the
103 county sheriff, chief of police or authorized deputy.

104 In consideration of the foregoing qualifications, I
105 hereby make application for an official absent voter's
106 ballot (or ballots if more than one are to be used) to be
107 voted by me at such election, and request that such
108 ballot or ballots be mailed to me at the following
109 address: _____

110 (give full address for mailing purposes)

111 (Complete the following paragraph only if assistance
112 will be needed in voting absent voter's ballot):

113 I further declare that I will need assistance in voting
114 an absent voter's ballot for the following reasons: _____

115 _____
116 _____
117 (specify illiteracy or exact nature of physical
118 disability, illness or injury)

119 I hereby declare under the penalties for false swear-
120 ing as provided in section three, article nine, chapter
121 three of the code of West Virginia, one thousand nine
122 hundred thirty-one, as amended, that the statements and
123 declarations contained in this application are true and
124 correct to the best of my knowledge and belief.

125 _____
126 Signature of Applicant

127 _____
128 (or in case the applicant is illiterate he
129 shall make his mark and have it witnessed
130 on the following lines):

131 _____
132 Mark of Applicant

133 _____
134 Signature of Witness"

135 If the person applying for an absent voter's ballot by
136 mail be unable to sign his application because of
137 illiteracy, he shall make his mark on the signature line
138 above provided for an illiterate applicant which mark
139 shall be witnessed.

140 The following declaration must be completed and
141 signed if the reason specified in the above application
142 for being unable to vote in person at such election is
143 anticipated confinement in a hospital, institution or
144 other place for medical reasons.

145 "STATEMENT OF PHYSICIAN (CHIROPRACTOR)

146 I, _____, hereby declare that I am a
147 physician (chiropractor) duly licensed to practice in the
148 state of _____; that I last examined
149 _____, the applicant whose signature ap-
150 pears on the application above on the _____ day
151 of _____, 19____; and that in my opinion:

152 The applicant will, because of _____
153 _____,
154 (state for what medical reasons)
155 be confined in _____,
156 (specify hospital, institution
157 or other place)
158 on or about the _____ day of _____, 19____,
159 and will because of such reasons not be able to go to the
160 polls on the _____ day of _____,
161 19____, the date of the election.

162 _____
163 Signature of Physician (Chiropractor)"

164 The following declaration must be completed and
165 signed if the reason specified in the above application
166 for being unable to vote in person at the election is
167 incarceration in a facility within the county for other
168 than conviction of treason, bribery or a felony:

169 "STATEMENT OF SHERIFF, CHIEF OF POLICE
170 OR AUTHORIZED DEPUTY

171 I, _____, hereby declare that the applicant
172 whose signature appears on the application above will

173 be confined in the county or city jail or other detention
174 facility on the _____ day of _____, 19
175 _____, the date of the election, and is not under
176 conviction of treason, bribery or a felony.

177

178

SIGNATURE

179

180

TITLE

181

182

COUNTY"

183 In lieu of the application for an absent voter's ballot
184 provided above, those persons specified in subdivision
185 (2), section one of this article may use the federal
186 postcard application for absent voter's ballot form issued
187 under authority of the Uniformed and Overseas Citizens
188 Absentee Voting Act of 1986, as amended (Public Law
189 99-410, 42 U.S.C. 1973, et seq.). Any such federal
190 postcard application does not have to be executed
191 pursuant to oath or attestation. Upon receipt of a
192 properly completed copy of such form, the clerk of the
193 circuit court shall process it the same as any other
194 application for an absent voter's ballot by mail. Any
195 such properly completed copy may be returned only to
196 the clerk of the circuit court of the county in which the
197 applicant is a registered voter.

198 Immediately upon receipt of a completed application
199 for voting an absent voter's ballot by mail, the clerk of
200 the circuit court shall determine (1) whether the
201 application for voting such ballot has been completed as
202 required by law; (2) whether he has evidence that any
203 of the statements contained in the application are not
204 true; (3) whether the applicant is in fact duly registered
205 in the precinct of his residence as provided by law and
206 insofar as registration is concerned would be permitted
207 to vote at the polls in such election; and (4) whether the
208 applicant has voted absentee by mail as a result of being
209 out of the county more than four consecutive times:
210 *Provided*, That the determination as to whether the
211 applicant has voted more than four consecutive times
212 shall not apply if the applicant is a citizen residing out

213 of the United States; or a member, spouse or dependent
214 of a member serving in the uniformed services; or a
215 college student living outside his or her home county. If
216 the determination of the clerk of the circuit court as to
217 (1) or (3) is in the negative or as to (2) or (4) is in the
218 affirmative, the clerk shall notify the applicant at the
219 time he mails the absent voter's ballot to him that he
220 will challenge the applicant's privilege to vote an absent
221 voter's ballot by mail for reasons which he shall indicate
222 and, upon receipt of the applicant's absent voter's ballot,
223 the clerk shall challenge such ballot. If the challenge is
224 made under subdivision (4) above, such a challenge shall
225 be removed upon submission of proof of residence before
226 the board of canvassers.

227 Upon determination by the clerk of the circuit court
228 that the applicant is entitled to vote an absent voter's
229 ballot by mail or that the applicant will be permitted
230 to vote an absent voter's ballot by mail with such ballot
231 to be challenged by the clerk, the clerk shall between
232 the forty-second day and the fourth day next prior to the
233 election in which the absent voter's ballot is to be used,
234 mail to the applicant the following absentee voting
235 supplies: *Provided*, That the clerk shall mail such voting
236 supplies to an applicant whose address is shown to be
237 outside the continental limits of the United States by
238 priority airmail on the same day the application is
239 received in the clerk's office or on the next day
240 thereafter that he has both an application and a ballot:

241 (a) One official absent voter's ballot (or ballots if more
242 than one are to be used) which has been prepared in
243 accordance with law for use in such election; such ballot
244 in the case of a primary election shall be of the party
245 of the applicant's affiliation as indicated on his registra-
246 tion card or, in the case the applicant is not found to
247 be registered by the clerk but votes a ballot challenged
248 by the clerk, the clerk shall send to the applicant an
249 absent voter's ballot of the party designated by the
250 applicant in his application;

251 (b) One Absent Voter's Ballot Envelope No. 1, un-
252 sealed, which shall have no writing thereon except the
253 designation "Absent Voter's Ballot Envelope No. 1";

254 (c) One Absent Voter's Ballot Envelope No. 2,
255 unsealed;

256 (d) Notice that an absent voter's ballot returned from
257 outside the continental limits of the United States must
258 be mailed priority airmail; and

259 (e) Notice that absent voters' ballots must be received
260 in the office of the clerk not later than the time of
261 closing of the polls.

262 Upon receipt of an absent voter's ballot by mail, the
263 voter shall mark the ballot and the voter may have
264 assistance in voting his absent voter's ballot in accor-
265 dance with the provisions of section six of this article.

266 After the voter has voted his absent voter's ballot, he
267 shall (1) enclose the same in Absent Voter's Ballot
268 Envelope No. 1, and seal that envelope, (2) enclose sealed
269 Absent Voter's Ballot Envelope No. 1 in Absent Voter's
270 Ballot Envelope No. 2 and seal that envelope, (3)
271 complete and sign the forms, if any, on Absent Voter's
272 Ballot Envelope No. 2 according to the instructions
273 thereon, and (4) mail, postage prepaid and, if from
274 outside the continental limits of the United States, by
275 priority airmail, the sealed Absent Voter's Ballot
276 Envelope No. 2 to the clerk of the circuit court of the
277 county in which he is registered to vote.

278 Upon receipt of such sealed envelope, the clerk shall
279 (1) enter onto the envelope such information as may be
280 required of him according to the instructions thereon;
281 (2) enter his challenge, if any, to the absent voter's
282 ballot; (3) enter the required information into a record
283 of persons making application for and voting an absent
284 voter's ballot by personal appearance or by mail or
285 otherwise (the form of which record and the information
286 to be entered therein shall be prescribed by the
287 secretary of state); and (4) place such sealed envelope in
288 a secure location in his office, there to remain until
289 delivered to the polling place in accordance with the
290 provisions of this article or, in case of a challenged
291 ballot, to the county commission sitting as a body of
292 canvassers.

§3-3-5c. Procedures for voting an emergency absent voter's ballot by qualified voters.

1 (a) Notwithstanding any other provision of this
2 chapter, a person qualified to vote an absent voter's
3 ballot, as defined in subdivision (1), section one of this
4 article, who is admitted, on or after the seventh day next
5 preceding the election, to a hospital or other duly
6 licensed health care facility within the county of their
7 residence for emergency medical treatment, and who
8 remains confined and is unable to vote at the polls on
9 election day, may vote an emergency absent voter's
10 ballot under the procedures established in this section.
11 The county commission may adopt a policy extending
12 the emergency absentee voting procedures to hospitals
13 or other duly licensed health care facilities within an
14 adjacent county or within thirty-five miles of the county
15 seat: *Provided*, That the policy shall be adopted by the
16 county commission at least ninety days prior to the
17 election that will be affected and a copy of such policy
18 shall be filed with the secretary of state.

19 (b) On or before the first Monday of the month next
20 preceding the date on which any election is to be held
21 the circuit clerk of each county shall notify the county
22 commission of the number of sets of emergency absent
23 voter ballot commissioners which he or she deems
24 necessary to perform the duties and functions hereinaf-
25 ter set forth.

26 (c) A set of emergency absent voter ballot commis-
27 sioners at-large shall consist of two persons, appointed
28 by the county commission in accordance with the
29 procedure prescribed for the appointment of election
30 commissioners under the provisions of section twenty-
31 eight, article one of this chapter but without regard to
32 magisterial district or precinct. Emergency absent voter
33 ballot commissioners shall have the same qualifications
34 and rights and take the same oath required under the
35 provisions of this chapter for commissioners of elections.
36 Such commissioners shall be compensated for services
37 and expenses in the same manner as commissioners of
38 election obtaining and delivering election supplies under

39 the provisions of section forty-four, article one of this
40 chapter.

41 (d) Upon request of the voter or a member of the
42 voter's immediate family, the circuit clerk, upon
43 receiving a proper request for voting an emergency
44 absent voter's ballot no earlier than the seventh day next
45 preceding the election and no later than noon of election
46 day, shall supply to the emergency absent voter's ballot
47 commissioners the application for voting an emergency
48 absent voter's ballot and the balloting materials. The
49 emergency absent voter ballot application shall be
50 prescribed by the secretary of state and shall be in
51 substantially the following form:

52 "APPLICATION FOR VOTING AN EMERGENCY
53 ABSENT VOTER'S BALLOT

54 KNOWING THAT I CAN BE FINED NOT MORE
55 THAN ONE THOUSAND DOLLARS AND IMPRI-
56 SONED IN THE COUNTY JAIL FOR A PERIOD OF
57 NOT MORE THAN ONE YEAR FOR KNOWINGLY
58 MAKING A FALSE STATEMENT OR REPRESENTATION
59 HEREIN, I, _____, hereby
60 declare that I am now, or will have been, a resident of
61 the state of West Virginia for twelve months, and of the
62 county of _____, for thirty days next preced-
63 ing the date of the ensuing election to be held on the
64 _____ day of _____, 19____; that I now
65 reside at _____

66 _____
67 (give full address)
68 in the magisterial district of _____, in said
69 county; that I am a duly qualified voter entitled to vote
70 in such election; that I am registered in the precinct of
71 my residence as provided by law; that I am registered
72 as a _____;

73 (1) I will be unable to vote in person at the polls on
74 election day because I have been confined in _____

75 _____
76 _____
77 (State name and location of facility)

78 since _____
79 (State date of confinement commenced)
80 because of _____
81 (State particulars of illness or injury)

82 (2) My treating physician is _____.

83 I hereby declare under the penalties for false swear-
84 ing as provided in section three, article nine, chapter
85 three of the code of West Virginia, one thousand nine
86 hundred thirty-one, as amended, that the statements and
87 declarations contained in this application are true and
88 correct to the best of my knowledge and belief.

89 _____
90 Signature of Applicant
91 _____
92 (or in case the applicant is illiterate he
93 shall make his mark and have it witnessed
94 on the following lines):

95 _____
96 Mark of Applicant

97 _____
98 Signature of Witness"

99 If the person applying for an emergency absent voter's
100 ballot be unable to sign his application because of
101 illiteracy, he shall make his mark on the signature line
102 above provided for an illiterate applicant which mark
103 shall be witnessed.

104 The following declaration is to be completed and
105 signed by each of the emergency absent voter's ballot
106 commissioners:

107 "STATEMENT OF EMERGENCY ABSENT
108 VOTER'S BALLOT COMMISSIONERS

109 We, _____ and _____, hereby declare that we are
110 the duly appointed emergency absent voter's ballot
111 commissioners and have met the applicant, whose name
112 appears on the application above at his or her place of
113 confinement on the _____ day of _____,

114 19____; and that in our opinion, the applicant will,
115 because of an emergency medical confinement which
116 commenced at least seven days prior to the election, be
117 unable to go to the polls on the _____day of
118 _____, 19____, the date of the election.

119 We have determined that the applicant has been
120 confined in _____

121 _____
122 (State name and location of facility)

123 since _____
124 (State date confinement commenced)

125 because of _____
126 (State particulars of illness or injury)

127 _____

128 (Date) (Signature of Emergency Absent Voter's
129 Ballot Commissioner)

130 _____
131 (Date) (Signature of Emergency Absent Voter's
132 Ballot Commissioner)"

133 (e) At least one of the emergency absent voter ballot
134 commissioners receiving the balloting materials shall
135 sign a receipt which shall be attached to the application
136 form. Each of the emergency absent voter ballot
137 commissioners shall deliver the materials to the absent
138 voter, await his or her completion of the application and
139 then the ballot, and return the same to the circuit clerk,
140 and upon delivering the application and the voted ballot
141 to the circuit clerk, sign an oath that no person other
142 than the absent voter voted the ballot. The application
143 and the voted ballot shall be returned to the circuit clerk
144 prior to the close of the polls on election day. Any ballots
145 received by the clerk after the time that delivery may
146 reasonably be made but before the closing of the polls
147 shall be treated as challenged absent voters' ballots in
148 accordance with the provisions of section ten of this
149 article and in addition to those absent voters' ballots
150 subject to challenge as enumerated therein.

151 (f) Upon receiving the application and emergency
152 absent voter's ballot, the clerk of the circuit court shall
153 ascertain whether the application is complete and the

154 voter is properly registered to vote with the office of the
155 clerk of the county commission. If the voter is found to
156 be properly registered in the precinct shown on the
157 application, the ballot shall be delivered to the precinct
158 election commissioner pursuant to section seven of this
159 article. If the voter is found not to be registered, then
160 the ballot shall be challenged for that reason or any
161 other provided for in section ten of this article.

162 (g) If either or both of the emergency absent voter
163 ballot commissioners should refuse to sign any applica-
164 tion for voting an emergency absent voter's ballot, then
165 the voter shall be permitted to vote as an emergency
166 absent voter and any such ballot shall be treated as a
167 challenged absent voter's ballot in accordance with the
168 provisions of section ten of this article and in addition
169 to those absent voters' ballots subject to challenge as
170 enumerated therein.

171 (h) Any voter who receives assistance in voting an
172 emergency absent voter's ballot shall comply with the
173 provisions of section six of this article. Any other
174 provisions of this chapter relating to absent voter's
175 ballots not altered by the provisions of this section shall
176 govern the treatment of emergency absent voter's
177 ballots.

§3-3-10. Challenging of absent voters' ballots.

1 The clerk of the circuit court may challenge an absent
2 voter's ballot on any of the following grounds: (1) That
3 the application for an absent voter's ballot has not been
4 completed as required by law; (2) that any statement or
5 declaration contained in the application for an absent
6 voter's ballot is not true; (3) that the applicant for an
7 absent voter's ballot is not registered to vote in the
8 precinct of his residence as provided by law; (4) that the
9 person voting an absent voter's ballot by personal
10 appearance in his office had assistance in voting such
11 ballot when the person was not qualified for such voting
12 assistance because (a) the affidavit of the person who
13 received such assistance does not indicate a legally
14 sufficient reason for such assistance, or (b) the person
15 who received such assistance did not make an affidavit

16 as required by this article, or (c) the person who
17 received such assistance is not so illiterate as to have
18 been unable to read the names on the ballot or that he
19 is not so physically disabled as to have been unable to
20 see or mark the absent voter's ballot; (5) that the person
21 who voted an absent voter's ballot by mail and received
22 assistance in voting such ballot was not qualified under
23 the provisions of this article for such assistance; and (6)
24 that the person has voted absentee by mail as a result
25 of being out of the county more than four consecutive
26 times: *Provided*, That the determination as to whether
27 the person has voted more than four consecutive times
28 shall not apply if the person is a citizen residing out of
29 the United States; or a member, spouse or dependent of
30 a member serving in the uniformed services; or a college
31 student living outside of his or her home county.

32 Any one or more of the election commissioners or poll
33 clerks in a precinct may challenge an absent voter's
34 ballot on any of the following grounds: (1) That the
35 application for an absent voter's ballot was not com-
36 pleted as required by law; (2) that any statement or
37 declaration contained in the application for an absent
38 voter's ballot is not true; (3) that the person voting an
39 absent voter's ballot is not registered to vote in the
40 precinct of his residence as provided by law; (4) that the
41 signatures of the person voting an absent voter's ballot
42 as they appear on his registration record, his application
43 for an absent voter's ballot, and the absent voter's ballot
44 envelope are not in the same handwriting; (5) that the
45 absent voter's ballot does not have thereon the official
46 seal of the clerk of the circuit court and all signatures
47 of members of the board of ballot commissioners; (6)
48 that the person voting an absent voter's ballot by
49 personal appearance in the office of the clerk of the
50 circuit court had assistance in voting such ballot when
51 the person was not qualified for such assistance because
52 (a) the affidavit of the person who received such
53 assistance does not indicate a legally sufficient reason
54 for such assistance, or (b) the person who received such
55 assistance did not make an affidavit as required by this
56 article, or (c) the person who received such assistance
57 is not so illiterate as to have been unable to read the

58 names on the ballot or that he was not so physically
59 disabled as to have been unable to see or mark the
60 absent voter's ballot; (7) that the person voted an absent
61 voter's ballot by mail and received assistance in voting
62 such ballot when not qualified under the provisions of
63 this article for such assistance; (8) that the person who
64 voted the absent voter's ballot voted in person at the
65 polls on election day; (9) that the person voted an absent
66 voter's ballot under authority of subdivision (3) of section
67 one of this article and is or was present in the county
68 in which he is registered to vote between the opening
69 and closing of the polls on election day; (10) that the
70 person who voted an absent voter's ballot had died
71 before election day; (11) that the person voted an absent
72 voter's ballot under authority of subdivision (1) of section
73 one of this article and was able to vote at the polls on
74 election day; and (12) on any other ground or for any
75 reason on which or for which the ballot of a voter voting
76 in person at the polls on election day may be challenged.

77 Any registered voter in the county may challenge an
78 absent voter's ballot voted under authority of subdivision
79 (3) of section one of this article on the ground that the
80 voter of such ballot is or was in the county in which he
81 is registered to vote between the opening and closing of
82 the polls on election day and may challenge an absent
83 voter's ballot voted under authority of subdivision (1) of
84 section one of this article on the ground that the voter
85 of such ballot was able to vote at the polls on election
86 day.

87 Forms for, and the manner of, challenging an absent
88 voter's ballot under the provisions of this article shall
89 be prescribed by the secretary of state.

90 Absent voters' ballots challenged by the clerk of the
91 circuit court under the provisions of this article shall be
92 transmitted by the clerk directly to the county commis-
93 sion sitting as a board of canvassers; and the absent
94 voters' ballots challenged by the election commissioners,
95 poll clerks and registered voters of the county under the
96 provisions of this article shall not be counted by the
97 election officials but shall be transmitted by them to the
98 county commission sitting as a board of canvassers.

- 99 Action by the board of canvassers on such challenged
100 absent voters' ballots shall be governed by the provisions
101 of section forty-one, article one of this chapter.

CHAPTER 72

(H. B. 2235—By Delegates Berry and Tribett)

[Passed March 20, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eight, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the filing of written statements with the secretary of state designating the treasurer of a political committee or the financial agent of a candidate; enlarging the time period for filing such statement from sixty days prior to an election to twenty-eight days prior to an election; designating the specific time of receipt or postmark requirements; and defining the terms "person" and "financial agent".

Be it enacted by the Legislature of West Virginia:

That section four, article eight, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-4. Treasurers and financial agents; written designation requirements; "person" and "financial agent" defined.

- 1 (a) No person shall act as the treasurer of any political
- 2 committee, or as financial agent for any candidate for
- 3 nomination or election to any office to be filled by the
- 4 voters of the entire state, or candidates for nomination
- 5 or election for any office, encompassing an election
- 6 district larger than a county, or any person or organ-
- 7 ization advocating or opposing the nomination, election
- 8 or defeat of any candidate, or the passage or defeat of
- 9 any issue, thing or item to be voted upon, encompassing
- 10 an election district larger than a county, unless a

11 written statement designating him as such treasurer or
12 financial agent shall be filed with the secretary of state,
13 at least twenty-eight days before the election at which
14 he is to act, and must be received before midnight,
15 eastern standard time, of that day, or if mailed, shall
16 be postmarked before that hour.

17 (b) No person shall act as treasurer of any such
18 committee or as financial agent for any candidate to be
19 nominated or elected by the voters of a county or a
20 district therein, or as the treasurer or financial agent
21 for a candidate for the nomination or election to any
22 other office, or for the passage or defeat of any issue,
23 thing or item to be voted upon not herein mentioned,
24 unless a written statement designating him as such
25 treasurer or financial agent shall be filed with the clerk
26 of the county commission at least twenty-eight days
27 before the election at which he is to act, and must be
28 received before midnight, eastern standard time, of that
29 day, or if mailed, shall be postmarked before that hour.

30 (c) Notwithstanding the provisions of subsections (a)
31 and (b) of this section, a filing designating a treasurer
32 or financial agent for a state or county political
33 executive committee may be made anytime before the
34 committee either accepts or spends funds on behalf of
35 the committee. Once a designation is made by a state
36 or county political executive committee, no additional
37 designations shall be required under this section until
38 a successor treasurer or financial agent is designated.
39 A state or county political executive committee may
40 terminate a designation made pursuant to this section
41 by making a written request to terminate the designa-
42 tion and by stating in the request that the committee
43 has no funds remaining in the committee's account. This
44 written request shall be made with either the secretary
45 of state or the clerk of the county commission as
46 provided by subsections (a) and (b) of this section.

47 (d) As used in this article:

48 The term "person" shall include an individual,
49 partnership, committee, association, corporation, and
50 any other organization or group of persons; and

51 The term "financial agent" shall include any person
52 acting for and by himself, or any two or more natural
53 persons acting together or cooperating in a financial
54 way to aid or take part in the nomination or election of
55 any candidate for public office, or to aid or promote the
56 success or defeat of any political party or principle at
57 any election, or any proposition submitted to a vote at
58 a public election.

CHAPTER 73

(Com. Sub. for H. B. 2028—By Delegates Love and Ashley)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact sections three, five, eight, fourteen and twenty-two, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-three, all relating to definitions; emergency medical services advisory council, duties, composition, appointment, meetings, compensation and expenses, and continuation of the council; standards for emergency medical service personnel, adding class of emergency medical services personnel; services that may be performed by emergency medical services personnel, adding class of emergency medical services personnel; transportation of unconscious or otherwise uncommunicative patients.

Be it enacted by the Legislature of West Virginia:

That sections three, five, eight, fourteen and twenty-two, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twenty-three, all to read as follows:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-3. Definitions.

- §16-4C-5. Emergency medical services advisory council; duties, composition, appointment, meetings, compensation and expenses.
- §16-4C-8. Standards for emergency medical service personnel.
- §16-4C-14. Services that may be performed by emergency medical services personnel.
- §16-4C-22. Transportation of unconscious or otherwise uncommunicative patients.
- §16-4C-23. Authority of the director to make regulations.

§16-4C-3. Definitions.

1 As used in this article, unless the context clearly
2 requires a different meaning:

3 “Ambulance” means any privately or publicly owned
4 vehicle or aircraft which is designed, constructed or
5 modified; equipped or maintained; and operated for the
6 transportation of patients.

7 “Ambulance service” means the transportation, and
8 treatment at the site of pickup and en route, of a patient
9 to or from a place where medical, hospital or clinical
10 service is normally available.

11 “Council” means the emergency medical service
12 advisory council created pursuant to section five of this
13 article.

14 “Director” means the director of health.

15 “Emergency medical services” means all services
16 which are set forth in P.L. 93-154 “The Emergency
17 Medical Services Act of 1973” and those included in and
18 made a part of the emergency medical services plan of
19 the department of health inclusive of, but not limited to,
20 caring for and giving life-saving or life-preserving
21 treatment to a patient.

22 “Emergency medical service personnel” means any
23 person certified by the director to provide emergency
24 medical services as set out in section eight of this article
25 and includes, but is not limited to, emergency medical
26 service attendants, emergency medical technicians,
27 emergency medical technicians-ambulance, emergency
28 medical technicians-intermediate, mobile intensive care
29 paramedics, emergency medical technician-paramedics,
30 physicians, osteopathic physicians, persons certified to
31 provide cardiopulmonary resuscitation, registered

32 nurses and licensed practical nurses who have been
33 trained in first aid, or other licensed or certified health
34 providers who meet the standards and training require-
35 ments as determined by the director.

36 "Emergency medical service attendant" means a
37 person certified by the director to render such emer-
38 gency medical services as are authorized for such
39 emergency medical service attendant in section eight of
40 this article.

41 "Emergency medical technician" means a person
42 certified by the director to render such emergency
43 medical services as are authorized for such emergency
44 medical technician in section eight of this article.

45 "Emergency medical technician-ambulance" means a
46 person certified by the director to render such emer-
47 gency medical services as are authorized for such
48 emergency medical technician-ambulance in section
49 eight of this article.

50 "Emergency medical technician-intermediate" means
51 a person certified by the director to render such
52 emergency medical services as are authorized for such
53 emergency medical technician-intermediate in section
54 eight of this article.

55 "Emergency medical technician-critical care" means
56 a person certified by the director to render such
57 emergency medical services as are authorized for such
58 emergency medical technician-critical care in section
59 eight of this article.

60 "Mobile intensive care paramedic" means a person
61 certified by the director to render such emergency
62 medical services as are authorized for such mobile
63 intensive care paramedic in section eight of this article.

64 "Emergency medical technician-paramedic" means a
65 person certified by the director to render such emer-
66 gency medical services as are authorized for such
67 emergency medical technician-paramedic in section
68 eight of this article.

69 "Emergency medical service provider" means any

70 authority, person, corporation, partnership or other
71 entity, public or private, which owns or operates an
72 ambulance which provides emergency medical service
73 in this state.

74 "Governing body" has the meanings ascribed to it as
75 applied to a municipality in subdivision (1), subsection
76 (b), section two, article one, chapter eight of this code.

77 "Line officer" means the emergency medical service
78 personnel, present at the scene of an accident, injury or
79 illness, who has taken the responsibility for patient care.

80 "Medical command" means the issuing of orders by a
81 physician or osteopathic physician from a medical
82 facility to emergency medical service personnel for the
83 purpose of providing appropriate patient care.

84 "Municipality" has the meaning ascribed to it in
85 subdivision (1), subsection (a), section two, article one,
86 chapter eight of this code.

87 "Patient" means any sick, injured, wounded or
88 otherwise incapacitated or helpless person, or an
89 expectant mother who needs medical, hospital or clinical
90 service under an existing or imminent emergency
91 situation.

92 "Service reciprocity" means the provision of emer-
93 gency medical services to citizens of this state by
94 emergency medical service personnel certified to render
95 such services by a neighboring state.

96 "Small emergency medical service provider" means
97 any emergency medical service provider which is made
98 up of less than twenty emergency medical service
99 personnel.

**§16-4C-5. Emergency medical services advisory council;
duties, composition, appointment, meetings,
compensation and expenses.**

1 The emergency medical service advisory council,
2 heretofore created and established by former section
3 seven of this article, shall be continued for the purpose
4 of developing, with the director, standards for emer-
5 gency medical service personnel and for the purpose of

6 providing advice to the office of emergency medical
7 services and the director thereof, as established by
8 section four of this article with respect to reviewing and
9 making recommendations for and providing assistance
10 to the establishment and maintenance of adequate
11 emergency medical services for all portions of this state.

12 The council shall have the duty to advise the director
13 in all matters pertaining to his duties and functions in
14 relation to carrying out the purposes of this article.

15 The council shall be composed of thirteen members
16 appointed by the governor by and with the advice and
17 consent of the Senate. The mountain state emergency
18 medical services association shall submit to the governor
19 a list of six names of representatives from their
20 association and a list of three names shall be submitted
21 to the governor of representatives of their respective
22 organizations by the West Virginia association of county
23 officials, West Virginia state firemen's association, West
24 Virginia hospital association, West Virginia state
25 medical association, West Virginia chapter of the
26 American college of emergency physicians, West
27 Virginia emergency medical services administrators
28 association and the state department of education. The
29 governor shall appoint from the respective lists submit-
30 ted two persons who represent the mountain state
31 emergency medical services association, one of whom
32 shall be a paramedic and one of whom shall be an
33 emergency medical technician, and one person from the
34 West Virginia association of county officials, West
35 Virginia state firemen's association, West Virginia
36 hospital association, West Virginia state medical
37 association, West Virginia chapter of the American
38 college of emergency physicians, West Virginia emer-
39 gency medical services administrators association and
40 the state department of education. The governor shall
41 in addition appoint one person to represent emergency
42 medical service providers operating within the state, one
43 person to represent small emergency medical service
44 providers operating within this state and two persons to
45 represent the general public. Not more than four of the
46 members shall be appointed from any one congressional

47 district. No member shall serve more than four consec-
48 utive terms.

49 The council shall choose its own chairman and meet
50 at the call of the director at least twice a year.

51 The members of such council may be reimbursed for
52 any and all reasonable and necessary expenses actually
53 incurred in the performance of their duties.

54 After having conducted a performance and fiscal
55 audit through its joint committee on government
56 operations, pursuant to section nine, article ten, chapter
57 four of this code, the Legislature hereby finds and
58 declares that the emergency medical services advisory
59 council should be continued and reestablished. Accord-
60 ingly, notwithstanding the provisions of section four,
61 article ten, chapter four of this code, the emergency
62 medical services advisory council shall continue to exist
63 until the first day of July, one thousand nine hundred
64 ninety-five.

**§16-4C-8. Standards for emergency medical service
personnel.**

1 (1) After the first day of January, one thousand nine
2 hundred eighty-five, every ambulance which provides
3 ambulance service or emergency medical services shall
4 carry two persons who are certified as emergency
5 medical service personnel, one of which personnel shall
6 be in the patient compartment at all times when a
7 patient is being transported by such ambulance. As a
8 minimum, of the personnel carried by any ambulance
9 operated by any emergency medical service provider,
10 one shall be trained in cardiopulmonary resuscitation
11 and one shall be certified as an emergency medical
12 service attendant.

13 (2) After the first day of July, one thousand nine
14 hundred eighty-six, at least one of the emergency
15 medical services personnel referred to in the imme-
16 diately preceding subsection shall be minimally certi-
17 fied as an emergency medical technician-ambulance on
18 any emergency call and such person shall be in

19 the patient compartment at all times a patient is being
20 transported.

21 As a minimum, the training for each class of emer-
22 gency medical service personnel shall include:

23 (a) Emergency medical service attendant: Shall have
24 earned and possess valid certificates from the depart-
25 ment or by authorities recognized and approved by the
26 director in advanced first aid or equivalent training and
27 cardiopulmonary resuscitation.

28 (b) Emergency medical technician: Shall have suc-
29 cessfully completed the course on emergency care of the
30 sick and injured established by the director or by
31 authorities recognized and approved by the director.

32 (c) Emergency medical technician-ambulance: Shall
33 have successfully completed the course for certification
34 as an emergency medical technician-ambulance as
35 established by the director or authorities recognized and
36 approved by the director.

37 (d) Emergency medical technician-intermediate:
38 Shall have successfully completed the course for
39 certification as an emergency medical technician-
40 ambulance and such other course of study and certifi-
41 cation as may be established by the director.

42 (e) Emergency medical technician-critical care: Shall
43 have successfully completed the course for certification
44 as an emergency medical technician-critical care and
45 such other course of study and certification as may be
46 established by the director.

47 (f) Mobile intensive care paramedic: Shall have
48 successfully completed the course for certification as a
49 mobile intensive care paramedic and such other course
50 of study and certification as may be established by the
51 director.

52 (g) Emergency medical technician-paramedic: Shall
53 have completed the course for certification as an
54 emergency medical technician-paramedic and such
55 other course of study and certification as may be
56 established by the director.

57 The foregoing shall not be considered to limit the
58 power of the director to prescribe training, certification
59 and recertification standards.

60 State and county continuing education and recertifi-
61 cation programs for all levels of emergency medical
62 service providers shall be available to emergency
63 medical service providers at a convenient site within the
64 county in which the emergency medical service provider
65 operates, or in an adjacent county within thirty minutes
66 travel time of the provider's primary place of operation.
67 Such continuing education program shall be provided
68 free of charge by the department of health to all
69 nonprofit emergency medical service providers.

70 (3) Any person desiring emergency medical services
71 personnel certification shall apply to the director using
72 forms and procedures prescribed by the director. Upon
73 receipt of such application, the director shall determine
74 if the applicant meets the requirements for certification
75 and examine the applicant, as in his discretion, is
76 necessary to make such a determination. If it is
77 determined that the applicant meets all of the require-
78 ments, the director shall issue an appropriate emer-
79 gency medical service personnel certificate to the
80 applicant. Emergency medical service personnel certif-
81 icates issued by the director shall be valid for a period
82 not to exceed three years from the date of their issuance
83 unless sooner suspended or revoked by the director.
84 Certificates may be renewed for additional periods not
85 to exceed three years after review and determination by
86 the director that such holder meets the requirements
87 established for emergency medical service personnel.

88 (4) The director may issue a temporary emergency
89 medical service personnel certificate to an applicant,
90 with or without examination of the applicant, when he
91 finds such issuance to be in the public interest. Unless
92 sooner suspended or revoked a temporary certificate
93 shall be valid initially for a period not exceeding one
94 hundred twenty days and it shall not be renewed
95 thereafter unless the director finds such renewal to be
96 in the public interest: *Provided*, That the expiration date
97 of any such temporary certificate issued shall be

98 extended until the holder of such certificate is afforded
99 at least one opportunity to take an emergency medical
100 services personnel training course within the general
101 area where he serves as an emergency medical service
102 personnel, but the expiration date shall not be extended
103 for any longer period of time or for any other reason.

104 The director may, on petition from an emergency
105 medical service provider, squad, ambulance authority or
106 county commission, grant an extension for compliance
107 with paragraphs (1) and (2) of this section where
108 circumstances prevent such emergency medical service
109 provider, squad, ambulance authority or county commis-
110 sion from meeting the time frames indicated. Such
111 extension shall be for no longer than twelve calendar
112 months from the date of the request and the request for
113 extension must include such information as may be
114 required by the director to determine if all reasonable
115 efforts have been made to comply with this section. No
116 petitioner shall be granted more than one extension
117 under this section.

**§16-4C-14. Services that may be performed by emer-
gency medical services personnel.**

1 Notwithstanding any other provision of law, emer-
2 gency medical service personnel, by each class, may
3 provide the following care:

4 (1) Emergency medical services attendant—Render
5 basic first-aid and cardiopulmonary resuscitation and
6 other services as are established by the director.

7 (2) Emergency medical technician—Render care
8 which may be performed by an emergency medical
9 services attendant and other services as are established
10 by the director.

11 (3) Emergency medical technician-ambulance—
12 Render the care permitted which may be performed by
13 an emergency medical service attendant and by an
14 emergency medical technician; and, in addition, other
15 services as are established by the director.

16 (4) Emergency medical technician-intermediate—
17 Render the care permitted which may be performed by

18 an emergency medical service attendant, emergency
19 medical technician and emergency medical technician-
20 ambulance; and, in addition, upon the order of a medical
21 command physician or surgeon, perform any other
22 services as are established by the director.

23 (5) Emergency medical technician-critical—Render
24 the care permitted which may be performed by an
25 emergency medical service attendant, an emergency
26 medical technician, emergency medical technician-
27 ambulance, emergency medical technician-interme-
28 diate; and, in addition, upon order of a medical
29 command physician or surgeon, perform any other
30 services as are established by the director.

31 (6) Mobile intensive care paramedic—Render care
32 which may be performed by an emergency medical
33 service attendant, an emergency medical technician,
34 emergency medical technician-ambulance, emergency
35 medical technician-intermediate, emergency medical
36 technician-critical care; and, in addition, upon order of
37 a medical command physician or surgeon, perform any
38 other services as are established by the director.

39 (7) Emergency medical technician-paramedic—
40 Render care which may be performed by an emergency
41 medical service attendant, an emergency medical
42 technician, an emergency medical technician-ambu-
43 lance, emergency medical technician-intermediate,
44 emergency medical technician-critical care, mobile
45 intensive care paramedic; and, in addition, upon order
46 of a medical command physician or surgeon, perform
47 any other services as are established by the director.

**§16-4C-22. Transportation of unconscious or otherwise
uncommunicative patients.**

1 (a) Emergency medical service personnel shall trans-
2 port critically ill or injured, unconscious or otherwise
3 uncommunicative patients to the medical facility
4 designated by the medical command physician.

5 (b) No person shall have the right to direct emergency
6 medical service personnel to transport a patient to a
7 specific medical facility unless such person is the legal

- 8 guardian, parent of a minor or has power of attorney
9 for the critically injured or ill patient.

§16-4C-23. Authority of the director to make regulations.

- 1 The director is hereby authorized and empowered to
2 make regulations pursuant to the procedures established
3 in chapter twenty-nine-a of this code for the purpose of
4 carrying out the purposes of this article.

CHAPTER 74

(H. B. 2162—By Delegates Bradley and Buchanan)

[Passed March 15, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article five, chapter forty-four of said code, all relating to the administration of estates; providing for the apportionment of West Virginia estate taxes; including a reference to the apportionment provision governing estates administered under authority of a fiduciary supervisor within the said estate tax provision; prohibiting certain nonresidents from serving as fiduciaries; setting forth exceptions; permitting nonresidents to serve as administrators of resident decedents' assets; requiring nonresident fiduciaries to give bond and setting forth the minimum amounts thereof; exceptions; appointment of clerk of the county commission as attorney-in-fact for purpose of receiving notice or process; proscribing the procedure by which notice or process may be perfected; prohibiting the removal from this state of estate assets until certain conditions are satisfied; making it a misdemeanor offense to remove estate assets from this state without complying with the appropriate laws; setting forth penalties; and providing for the removal of nonresident fiduciaries.

Be it enacted by the Legislature of West Virginia:

That section twenty-eight, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three, article five, chapter forty-four of said code be amended and reenacted, all to read as follows:

Chapter

11. Taxation.

44. Administration of Estates and Trusts.

CHAPTER 11. TAXATION.

ARTICLE 11. ESTATE TAXES.

§11-11-28. Apportionment of West Virginia estate taxes; deduction of taxes by the fiduciary from shares of beneficiaries.

1 Whenever there is an estate tax levied or assessed
2 under the provisions of any estate tax law of this state
3 heretofore or hereafter enacted, the amount of the tax
4 so paid shall be prorated among the persons interested
5 in the estate to whom such property is or may be
6 transferred or to whom any benefit accrues in confor-
7 mity with the provisions of section sixteen-a, article two,
8 and section eighteen, article three-a, chapter forty-four
9 of this code.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

1 (a) Notwithstanding any other provision of law, no
2 individual who is a nonresident of this state nor any
3 nonresident banking institution nor any corporation
4 having its principal office or place of business outside
5 this state may be appointed or act as executor, admin-
6 istrator, curator, guardian or committee in this state,
7 except that:

8 (1) An individual who is a nonresident of this state
9 may be appointed ancillary administrator of a nonres-
10 ident decedent's assets situate in this state if such

11 nonresident individual is lawfully acting as executor in
12 said decedent's state of domicile and submits letters of
13 probate authenticated by the probate authorities of the
14 decedent's state of domicile to the clerk of the county
15 commission of any county of this state wherein ancillary
16 administration is sought;

17 (2) An individual who is a nonresident of this state
18 may be appointed ancillary administrator of a nonres-
19 ident decedent's assets situate in this state if such
20 nonresident individual is acting as administrator in said
21 decedent's state of domicile and submits letters of
22 administration authenticated by the probate authorities
23 of the decedent's state of domicile to the clerk of the
24 county commission of any county of this state wherein
25 ancillary administration is sought;

26 (3) An individual who is a nonresident of this state
27 may be appointed and act as testamentary guardian of
28 a nonresident infant and thereby exercise dominion and
29 control over such nonresident infant's assets situate in
30 this state upon submission of authenticated documenta-
31 tion that such nonresident testamentary guardian was
32 so appointed at the place of domicile of the nonresident
33 infant. Such authenticated documentation shall be
34 submitted to the clerk of the county commission of any
35 county of this state wherein assets belonging to such
36 nonresident infant are situate;

37 (4) An individual who is a nonresident of this state
38 and who is named executor by a resident decedent may
39 qualify and act as executor in this state;

40 (5) An individual who is a nonresident of this state
41 may be appointed and act as administrator of a resident
42 decedent's assets in this state if appointed in accordance
43 with the provisions of section four, article one of this
44 chapter;

45 (6) An individual who is a nonresident of this state
46 may be appointed as the testamentary guardian of a
47 resident infant if appointed in accordance with the
48 provisions of section one, article ten of this chapter;

49 (7) An individual who is a nonresident of this state

50 may be appointed as committee of a resident incompe-
51 tent: *Provided*, That such appointment is made in
52 accordance with the provisions of section one, article
53 eleven, chapter twenty-seven of this code and if such
54 nonresident individual may otherwise qualify as
55 committee.

56 (b) Nonresident individuals enumerated in subsection
57 (a) of this section shall give bond with corporate surety
58 thereon, qualified to do business in this state, and the
59 amount of such bond shall not be less than double the
60 value of the personal assets and double the value of any
61 real property authorized to be sold or double the value
62 of any rents and profits from any real property which
63 the nonresident individual is authorized to receive,
64 except that:

65 (1) Any nonresident individual enumerated in subsec-
66 tion (a) of this section who is the spouse, parent, sibling,
67 lineal descendant or sole beneficiary of a resident or
68 nonresident decedent shall give bond with corporate
69 surety thereon qualified to do business in this state, with
70 such penalty as may be fixed pursuant to the provisions
71 of section seven, article one of this chapter, as approved
72 by the clerk of the county commission;

73 (2) Where the terms of a decedent's will direct that
74 a nonresident individual enumerated in subdivisions (1),
75 (3), (4) and (6) of subsection (a) of this section named in
76 a decedent's will shall not give bond or give bond at a
77 specified amount, it shall not be required or shall be
78 required only to the extent required under the terms of
79 the will, unless at the time the will is admitted to record
80 or at any time subsequently, on the application of any
81 person interested, or from the knowledge of the commis-
82 sion or clerk admitting the will to record, it is deemed
83 proper that greater bond be given.

84 (c) When a nonresident individual is appointed as
85 executor, administrator, testamentary guardian or
86 committee pursuant to the provisions of subsection (a)
87 of this section, said individual thereby constitutes the
88 clerk of the county commission wherein such appoint-
89 ment was made as his true and lawful attorney-in-fact

90 upon whom may be served all notices and process in any
91 action or proceeding against him as executor, adminis-
92 trator, testamentary guardian or committee or with
93 respect to such estate, and such qualification shall be a
94 manifestation of said nonresident individual's agree-
95 ment that any notice or process, which is served in the
96 manner hereinafter provided in this subsection, shall be
97 of the same legal force and validity as though such
98 nonresident was personally served with notice and
99 process within this state. Service shall be made by
100 leaving the original and two copies of any notice or
101 process, together with a fee of five dollars, with the clerk
102 of such county commission. The fee of five dollars shall
103 be deposited with the county treasurer. Such clerk shall
104 thereupon endorse upon one copy thereof the day and
105 hour of service and shall file such copy in his office and
106 such service shall constitute personal service upon such
107 nonresident: *Provided*, That the other copy of such notice
108 or process shall be forthwith sent by registered or
109 certified mail, return receipt requested, deliver to
110 addressee only, by said clerk to such nonresident at the
111 address last furnished by him to said clerk and either:
112 (1) Such nonresident's return receipt signed by him or
113 (2) the registered or certified mail bearing thereon the
114 stamp of the post office department showing that
115 delivery therefor was refused by such nonresident is
116 appended to the original notice or process filed there-
117 with in the office of the clerk of the county commission
118 from which such notice or process was issued. No notice
119 or process may be served on such clerk of the county
120 commission or accepted by him less than thirty days
121 before the return day thereof. The clerk of such county
122 commission shall keep a record in his office of all such
123 notices and processes and the day and hour of service
124 thereof. The provision for service of notice or process
125 herein provided is cumulative and nothing herein
126 contained shall be construed as a bar to service by
127 publication where proper or the service of notice or
128 process in any other lawful mode or manner.

129 (d) The personal estate of a resident decedent, infant
130 or incompetent may not be removed from this state until
131 the inventory or appraisalment of that resident dece-

132 dent's, infant's or incompetent's assets has been filed and
133 any new or additional bond required to satisfy the
134 penalties specified in subsection (b) of this section has
135 been furnished. The liability of a nonresident executor,
136 administrator, testamentary guardian or committee and
137 of any such surety shall be joint and several and a civil
138 action on any such bond may be instituted and main-
139 tained against the surety, notwithstanding any other
140 provision of this code to the contrary, even though no
141 civil action has been instituted against such nonresident.

142 (e) Any such nonresident who removes from this state
143 assets administered in and situate in this state without
144 complying with the provisions of this section, the
145 provisions of article eleven, chapter forty-four of this
146 code or any other requirement pertaining to fiduciaries
147 generally, shall be guilty of a misdemeanor, and, upon
148 conviction thereof, shall be fined not more than one
149 thousand dollars or confined in the county jail for not
150 more than one year, or, in the discretion of the court,
151 by both such fine and imprisonment.

152 (f) If a nonresident appointed pursuant to subsection
153 (a) of this section fails or refuses to file an accounting
154 required by this chapter, and the failure continues for
155 two months after the due date, he may, upon notice and
156 hearing, be removed or subjected to any other approp-
157 riate order by the county commission, and if his failure
158 or refusal to account continues for six months, he shall
159 be removed by the county commission.

CHAPTER 75

(H. B. 2111—By Delegates Murphy and Shores)

[Passed March 27, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twelve-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting the director of the farm management commission the discretion to give surplus foods to

nonprofit charitable organizations.

Be it enacted by the Legislature of West Virginia:

That section six, article twelve-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12A. FARM MANAGEMENT COMMISSION.

§19-12A-6. Appointment of farm management director; qualifications; powers and duties.

1 The commission shall appoint a farm management
2 director who, in addition to qualifications established by
3 the commission, shall have owned, operated or managed
4 a farm for at least five years within ten years immediately prior to his appointment. The farm management
5 director is the chief executive officer of the commission
6 and is responsible for conducting the operations of the
7 farms. He shall prepare an annual report of the farming
8 operations, including a listing of all receipts and
9 expenditures and shall present it to the commission and
10 the Legislature at the end of each fiscal year.

12 As authorized or directed by the commission, he shall
13 also:

14 (1) Prepare the annual budget request for the operation of the farm management commission and submit
15 it to the commission for approval and submission to the
16 commissioner of finance and administration.

18 (2) Receive and approve all requisitions for farm
19 supplies and equipment.

20 (3) Supervise the operation of all canneries and
21 determine what foods are to be canned.

22 (4) Recruit and approve assistant farm managers to
23 supervise each farm.

24 (5) Implement all orders of the commission.

25 (6) Supervise all other employees of the commission.

26 (7) Transfer farm supplies, farm equipment, farm
27 facilities, food stuffs and produce from one farm to

28 another to promote efficiency and improve farm
29 management.

30 With the approval of the commission, the farm
31 management director may rent or lease additional land
32 for farm use.

33 From the total amount of food, milk and other
34 commodities produced by the farm management com-
35 mission, the farm management director shall provide
36 each of the institutions under the control of the
37 department of health and the state commissioner of
38 corrections, at no cost, a proportionate amount of these
39 products based on the population and dietary needs of
40 each institution and each of these institutions shall use
41 the food, milk and commodities provided by the farm
42 management director for their annual food require-
43 ments. By the thirtieth day of September each year,
44 each institution shall present to the farm management
45 director a requisition request for the food, milk and
46 other commodities the institution will need during the
47 next fiscal year.

48 If, during the year, an institution finds that it needs
49 other or additional food, milk or commodities not
50 included in the requisition request for the year, the
51 institutional superintendent shall forward a supplemen-
52 tal request for the additional or other food, milk or
53 commodities to the farm management director at least
54 thirty days before the farm management director is to
55 deliver such other or additional food, milk or commod-
56 ities to the institution. An institution may purchase food,
57 milk or commodities from other sources if the farm
58 management director certifies in writing that he will be
59 unable to supply the needed food, milk or commodities
60 at the time such food, milk or commodities will be
61 needed by the institution. If the farm management
62 commission produces more food, milk and other com-
63 modities than can be consumed by the institutions, the
64 farm management director first shall sell this surplus
65 to other state agencies which request it at the wholesale
66 fair market price for the products. If any surplus
67 remains after sales to other state agencies, the director
68 may give such surplus foods to any nonprofit, religious

69 or charitable organizations which are exempt from
70 taxation under 26 U.S.C. §501(c)(3) or (4), or the director
71 may sell the surplus on the open market. All revenues
72 derived from the sale of any farm product shall be
73 deposited by the farm management director in the
74 general revenue fund of the state.

CHAPTER 76

(Com. Sub. for H. B. 2037—By Delegates Farley and Murensky)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections ten and eleven, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article one and section three, article two of said chapter, all relating to the submission of a tentative budget; allowing the second quarterly meeting between the joint committee on government and finance and the council of finance and administration to be held in any month during the second quarter of the fiscal year and changing the time for submission of requests for appropriations from August fifteenth to September first.

Be it enacted by the Legislature of West Virginia:

That sections ten and eleven, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section three, article one of said chapter be amended and reenacted and that section three, article two of said chapter be amended and reenacted, all to read as follows:

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION

Article

1. Department of Finance and Administration.
2. Budget Division.

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

***§5A-1-3. Council of finance and administration.**

1 The council of finance and administration is hereby
2 created and shall be composed of ten members, four of
3 whom shall serve ex officio and six of whom shall be
4 appointed as herein provided. The ex officio members
5 shall be the commissioner of the department of finance
6 and administration, the attorney general or his designee,
7 the state treasurer or his designee and the state auditor
8 or his designee; such designees are authorized to vote.
9 From the membership of the Legislature, the president
10 of the Senate shall appoint three senators as members
11 of the council, not more than two of whom shall be
12 members of the same political party, and the speaker
13 of the House shall appoint three delegates as members
14 of the council, not more than two of whom shall be
15 members of the same political party. Members of the
16 council appointed by the president of the Senate and the
17 speaker of the House shall serve at the will and pleasure
18 of the officer making their appointment. The commis-
19 sioner of finance and administration shall serve as
20 chairman of the council. Meetings of the council shall
21 be upon call of the chairman or a majority of the
22 members thereof. It shall be the duty of the chairman
23 to call at least four meetings in each fiscal year, one in
24 each quarter, or more often as necessary, and all
25 meetings shall be open to the public: *Provided*, That the
26 second quarterly meeting in each fiscal year shall be a
27 joint meeting with the joint committee on government
28 and finance of the Legislature called jointly by the
29 president of the Senate, speaker of the House and
30 commissioner of finance and administration and shall be
31 held in November or some other month during the
32 second quarter as mutually agreed upon.

33 All meetings of the council shall be held at the capitol
34 building in a suitable committee room which shall be
35 made available by the Legislature for such purposes.

36 The council shall serve the department of finance and
37 administration in an advisory capacity for purposes of
38 reviewing the performance of the administrative and

*Clerk's Note: This section was also amended by H. B. 2860, which passed subsequent to this act.

39 fiscal procedures of the state, including the oversight of
40 all federal funds, and shall have the following duties:

41 (1) To advise with the commissioner in respect to
42 matters of budgetary intent and efficiency, including
43 budget bill and budget document detail and format;

44 (2) To advise with the commissioner concerning such
45 studies of government and administration concerning
46 fiscal policy as it may consider appropriate;

47 (3) To advise with the commissioner in the preparation
48 of studies designed to provide long-term capital plan-
49 ning and finance for state institutions and agencies; and

50 (4) To advise with the commissioner in respect to the
51 application for, and receipt and expenditure of, antic-
52 ipated or unanticipated federal funds.

53 The appointed, non-ex officio members of the council
54 shall be entitled to receive such compensation and
55 reimbursement for expenses in connection with perfor-
56 mance of their duties, during interim periods, if not
57 otherwise receiving the same for such identical periods,
58 as is authorized by the applicable sections of article two-
59 a, chapter four of the code in respect to performance of
60 duties either within the state or, if deemed necessary,
61 out of state. Such compensation and expenses shall be
62 incurred and paid only after approval by the joint
63 committee on government and finance.

ARTICLE 2. BUDGET DIVISION.

§5A-2-3. Requests for appropriations; copies to legislative auditor.

1 The spending officer of each spending unit, other than
2 the Legislature and the judicial branch of state govern-
3 ment, shall on or before the first day of September of
4 each year, submit to the commissioner a request for
5 appropriations for the fiscal year next ensuing. On or
6 before the same date, the spending officer shall also
7 transmit two copies of such request to the legislative
8 auditor for the use of the finance committees of the
9 Legislature.

10 If the spending officer of any spending unit fails to
11 transmit to the legislative auditor two copies of the
12 request for appropriations within the time specified in
13 this section, the legislative auditor shall notify the
14 commissioner, auditor and treasurer of such failure, and
15 thereafter no funds appropriated to such spending unit
16 shall be encumbered or expended until the spending
17 officer thereof has transmitted such copies to the
18 legislative auditor.

19 If a spending officer submits to the commissioner an
20 amendment to the request for appropriations, two copies
21 of such amendment shall forthwith be transmitted to the
22 legislative auditor.

CHAPTER 77

(H. B. 2300—By Delegates Love and Martin)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact section nine, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing volunteer fire departments the privilege of purchasing on statewide contracts.

Be it enacted by the Legislature of West Virginia:

That section nine, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-9. Facilities of department available to local governmental bodies.

1 The director shall make available the facilities and
2 services of his department to counties; county schools;
3 municipalities; urban mass transportation authorities
4 created pursuant to article twenty-seven, chapter eight
5 of this code; mass transportation divisions of county and
6 municipal governments; volunteer fire departments; and

- 7 other local governmental bodies within this state. The
8 actual expenses incurred thereby shall be paid by the
9 local governmental body.

CHAPTER 78

(Com. Sub. for S. B. 273—By Senators Blatnik, et al)

[Passed April 6, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-a, relating to the designation of a central nonprofit agency to coordinate sales to the state under the provisions of section twelve, article three of said chapter and setting forth its purpose; the creation of a committee for the purchase of commodities and services from the handicapped and setting forth its purpose; the establishment of rule promulgation authority of the committee; and providing exceptions.

Be it enacted by the Legislature of West Virginia:

That chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-a, to read as follows:

**ARTICLE 3A. CENTRAL NONPROFIT COORDINATING AGENCY
AND COMMITTEE FOR THE PURCHASE OF
COMMODITIES AND SERVICES FROM THE
HANDICAPPED.**

§5A-3A-1. Purpose.

§5A-3A-2. Central nonprofit agency.

§5A-3A-3. Committee for the purchase of commodities and services from the handicapped.

§5A-3A-4. Responsibilities of the committee for the purchase of commodities and services from the handicapped.

§5A-3A-5. Rules.

§5A-3A-6. Exceptions.

§5A-3A-1. Purpose.

1 The purpose of this article is to further the state's
2 policy of encouraging disabled persons to achieve
3 maximum personal independence by engaging in
4 productive activities and in addition to provide state
5 agencies, institutions, and political subdivisions with a
6 method for achieving conformity with purchasing
7 procedures and requirements of nondiscrimination,
8 affirmative action, in employment matters related to
9 disabled persons.

§5A-3A-2. Central nonprofit agency.

1 A central nonprofit agency approved by the director
2 of the division of rehabilitation services is established
3 for the purpose of coordinating purchases under the
4 provisions of section twelve, article three of this chapter,
5 between various "spending units" of the state and
6 "nonprofit workshops." This agency shall have the
7 following responsibilities:

8 (a) Represent qualified nonprofit workshops in dealing
9 with state purchasing agents and the other bodies
10 charged with purchasing responsibilities;

11 (b) Evaluating the qualifications and capabilities of
12 workshops and entering, as necessary, into contracts
13 with government procuring entities for the furnishing
14 of the commodities or services provided by the
15 workshops;

16 (c) Overseeing workshops to ensure compliance with
17 contract performance and quality standards; list the
18 commodities and services of participating workshops,
19 research and assist the workshops in developing new
20 products and upgrading existing ones, and shall survey
21 applicable private industry to provide input on fair
22 market prices; and

23 (d) Present an annual report for each fiscal year
24 concerning the operations of its nonprofit workshops to
25 the director of the division of rehabilitation services.

**§5A-3A-3. Committee for the purchase of commodities
and services from the handicapped.**

1 (a) The committee for the purchase of commodities

2 and services from the handicapped is hereby created
3 and shall be composed of the following six members who
4 are to be appointed by the governor with the advice and
5 consent of the Senate: A private citizen who is conver-
6 sant with the problems incidental to the employment of
7 handicapped persons; a representative of a producing
8 nonprofit workshop; a representative of the division of
9 rehabilitation services; a representative of the depart-
10 ment of finance and administration; a representative of
11 private business who is knowledgeable in the activities
12 involved in the sale of commodities or services to
13 governmental entities; and a representative of organized
14 labor who is knowledgeable in matters relating to
15 employment of the disabled. The governor shall appoint
16 one member to serve as chairperson.

17 (b) Members of the committee are appointed to serve
18 two-year terms expiring on the thirty-first day of
19 January of odd-numbered years. Members may not
20 receive compensation for their service on the committee
21 or reimbursement by the state for expenses incurred in
22 performing their duties as members.

23 (c) The committee shall have as an executive secretary
24 the person charged with program management in
25 section twelve, article three of this chapter. The
26 secretary shall be responsible for the day-to-day
27 management of the committee and shall coordinate with
28 the central nonprofit agency to perform the duties
29 outlined in section twelve, article three of this chapter.

**§5A-3A-4. Responsibilities of the committee for the
purchase of commodities and services from
the handicapped.**

1 The committee shall have the following duties and
2 responsibilities:

3 (a) Determining the fair market price of all commod-
4 ities, printing and services produced by nonprofit
5 workshops and offered for sale by the central nonprofit
6 agency to the various departments and political subdi-
7 visions of the state. Prices shall be revised periodically
8 to reflect changing market conditions.

9 (b) Monitoring the activities of the central nonprofit
10 agency to assure that the interests of the state's
11 handicapped citizens are advanced by the agency. The
12 committee shall make rules necessary to monitor the
13 agency as well as matters related to the state's use of
14 the products and services produced by the handicapped.
15 Except as stated in section twelve, article three of this
16 chapter, rules shall reflect agreement with the policies
17 and procedures established by the state's purchasing
18 units.

19 (c) Monitoring the performance of the central non-
20 profit agency to see that the commodities and services
21 produced meet state specifications (or in the absence of
22 specifications meet standards in use by the federal
23 government or industry) as to quality and delivery. The
24 committee shall provide procedures for formal and
25 informal resolution of provider and consumer grievan-
26 ces or complaints.

27 (d) Maintaining records pertaining to its activities
28 under the act including records of sales, formal
29 grievances, number of handicapped workers employed,
30 a summary of disabilities for workers providing
31 services, a list of workshop products and services, and
32 the geographic distribution of provider workshops. On
33 or before the first day of January of each year the
34 committee shall file with the governor and the presiding
35 officer of each house of the Legislature a written report
36 summarizing the above records and giving a detailed
37 accounting for all funds received and disbursed by the
38 committee during the preceding year.

§5A-3A-5. Rules.

1 The committee may adopt rules for the implementa-
2 tion, extension, administration, or improvement of the
3 program authorized by this article.

§5A-3A-6. Exceptions.

1 Exceptions from the operation of the mandatory
2 provisions of section twelve, article three of this code
3 may be made in any case where the commodity or
4 service so produced or provided does not meet the

5 reasonable requirements of the purchasing unit or
6 cannot be reasonably provided by a nonprofit workshop
7 in the opinion of the committee or the central nonprofit
8 agency. No spending unit may evade the intent of this
9 section when required goods or services are reasonably
10 available from nonprofit workshops.

CHAPTER 79

(Com. Sub. for H. B. 2101—By Delegate Farley)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to repeal section fourteen-a, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article three, chapter twenty-nine of said code by adding thereto a new section, designated section twelve-b; to amend and reenact section twenty-four of said article three; and to further amend said chapter by adding thereto a new article, designated article three-b, all relating to inspection fee collections by the state fire marshal and payment of the same into special fund for the state fire commission; authorizing and setting caps on such inspection fees; providing for legislative appropriation of such fees; prohibiting the sale, possession or use of fireworks without a permit; authorizing the state fire marshal to adopt rules; fees; bond; proof of financial responsibility; providing for the licensure of electricians; providing a declaration of purpose; providing definitions; exemptions; establishing classes of licenses; setting forth minimum standards to qualify for licenses; licenses and renewal thereof; providing for applications; setting fees; providing for examinations; licensure without examination; denial, suspension or revocation of licenses; providing that noncompliance is a misdemeanor offense; providing penalties; providing the state fire marshal with certain powers; providing for the non-applicability of local ordinances in certain cases; and providing for the disposition of fees.

Be it enacted by the Legislature of West Virginia:

That section fourteen-a, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article three, chapter twenty-nine of said code be amended by adding thereto a new section, designated section twelve-b; that section twenty-four of said article three be amended and reenacted; and that said chapter twenty-nine be further amended by adding thereto a new article, designated article three-b, all to read as follows:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

Article

3. Fire Prevention and Control Act.

3B. Supervision of Electricians.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-12b. Fees.

§29-3-24. Unlawful sale, possession or use of fireworks; permit for public display.

§29-3-12b. Fees.

1 (a) The state fire marshal may establish fees in
2 accordance with the following:

3 (1) For blasting.—Any person storing, selling or using
4 explosives shall first obtain a permit from the state fire
5 marshal. Such permit shall be valid from the first day
6 of July through the thirtieth day of June of the
7 succeeding year beginning on the first day of July, one
8 thousand nine hundred eighty-nine. The state fire
9 marshal may charge a fee not to exceed fifty dollars for
10 such permit.

11 (2) For inspections of schools or day care facilities.—
12 The state fire marshal may charge a fee of up to twenty-
13 five dollars per annual inspection for inspection of
14 schools or day care facilities: *Provided*, That only one
15 such fee may be charged per year for any building in
16 which a school and a day care facility are co-located:
17 *Provided, however*, That any school or day care facility
18 may not be charged for an inspection more than one
19 time per twelve-month period.

20 (3) For inspections of hospitals or nursing homes.—
21 The state fire marshal may charge an inspection fee of

22 up to one hundred dollars per annual inspection of
23 hospitals or nursing homes: *Provided*, That any hospital
24 or nursing home may not be charged for an inspection
25 more than one time per twelve-month period.

26 (4) For inspections of personal care homes or board
27 and care facilities.—The state fire marshal may charge
28 an inspection fee of up to fifty dollars per annual
29 inspection for inspections of personal care homes or
30 board and care facilities: *Provided*, That any personal
31 care home or board and care facility may not be charged
32 for an inspection more than one time per twelve-month
33 period.

34 (5) For inspections of residential occupancies.—The
35 state fire marshal may charge an inspection fee of up
36 to one hundred dollars for each inspection of a residen-
37 tial occupancy. For purposes of this subdivision,
38 “residential occupancies” are those buildings in which
39 sleeping accommodations are provided for normal
40 residential purposes.

41 (6) For inspections of mercantile occupancies.—The
42 state fire marshal may charge an inspection fee of up
43 to one hundred dollars for inspections of mercantile
44 occupancies: *Provided*, That if such inspection is in
45 response to a complaint made by a member of the
46 public, the state fire marshal shall obtain from the
47 complainant an advance inspection fee of twenty-five
48 dollars. This fee shall be returned to the complainant if,
49 after the state fire marshal has made the inspection, he
50 finds that the complaint was accurate and justified, and
51 he shall thereafter collect an inspection fee of up to one
52 hundred dollars from the mercantile occupancy. If, after
53 the inspection has been performed, it appears to the
54 state fire marshal that such complaint was not accurate
55 or justified, the state fire marshal shall keep the twenty-
56 five dollar advance inspection fee obtained from the
57 complainant and may not collect any fees from the
58 mercantile occupant. For purposes of this section,
59 “mercantile occupancy” includes stores, markets and
60 other rooms, buildings or structures for the display and
61 sale of merchandise.

62 (7) For business occupancies.—The state fire marshal
63 may charge an inspection fee of up to one hundred
64 dollars for inspections of business occupancies: *Provided*,
65 That the provisions in subdivision (6) of this section shall
66 apply regarding complaints by members of the public.
67 For purposes of this section, “business occupancies” are
68 those buildings used for the transaction of business,
69 other than mercantile occupancies, for the keeping of
70 accounts and records, and similar purposes.

71 (8) For inspections of assembly occupancies.—The
72 state fire marshal may charge an inspection fee not
73 more than one time per twelve-month period for the
74 inspection of assembly occupancies. The inspection fee
75 shall be assessed as follows: For class C assembly
76 facilities, an inspection fee not to exceed fifty dollars; for
77 class B assembly facilities, an inspection fee not to
78 exceed seventy-five dollars; and for class A facilities, an
79 inspection fee not to exceed one hundred dollars.

80 For purposes of this subdivision, an “assembly
81 occupancy” includes, but is not limited to, all buildings
82 or portions of buildings used for gathering together fifty
83 or more persons for such purposes as deliberation,
84 worship, entertainment, eating, drinking, amusement,
85 or awaiting transportation. For purposes of this section,
86 a “class C assembly facility” is one that accommodates
87 fifty to three hundred persons; a “class B facility” is one
88 which accommodates more than three hundred persons
89 but less than one thousand persons; and a “class A
90 facility” is one which accommodates more than one
91 thousand persons.

92 (b) The state fire marshal shall have the authority to
93 establish a fee schedule for the fire safety review of
94 plans and specifications for new and existing construc-
95 tion as set forth in this article. Such fee shall be paid
96 by such party or parties receiving the review.

97 The fee schedule shall be based upon existing and
98 projected workloads as advanced by the state fire
99 marshal and the schedule shall be clearly set forth by
100 rules and regulations promulgated by the state fire
101 commission. In no event may this fee exceed ten dollars.

102 (c) All fees authorized and collected pursuant to this
103 article and article three-b of this chapter shall be paid
104 to the state fire marshal and thereafter deposited into
105 a special account for the operation of the state fire
106 commission in administering this article and article
107 three-b of this chapter: *Provided*, That for the fiscal year
108 one thousand nine hundred ninety, expenditures from
109 said account shall be made upon authorization by the
110 governor after submission of an expenditure schedule by
111 the state fire commission. For fiscal years thereafter,
112 the Legislature shall appropriate the moneys in said
113 account by a specific numbered account in the budget
114 bill. Any amounts not expended from such account at
115 the end of a fiscal year shall expire and be transferred
116 to the general fund, unless sooner reappropriated by the
117 Legislature.

118 (d) If the owner or occupant of any occupancy
119 arranges a time and place for an inspection with the
120 state fire marshal and is not ready for the occupancy
121 to be inspected at the appointed time and place, the
122 owner or occupant thereof shall be charged the inspec-
123 tion fee provided in this section unless at least forty-
124 eight hours prior to the scheduled inspection the owner
125 or occupant requests the state fire marshal to reschedule
126 such inspection. In the event a second inspection is
127 required by the state fire marshal as a result of the
128 owner or occupant failing to be ready for the inspection
129 when the state fire marshal arrives, the state fire
130 marshal shall charge the owner or occupant of such
131 occupancy the inspection fees set forth above for each
132 inspection trip required.

**§29-3-24. Unlawful sale, possession or use of fireworks;
permit for public display.**

1 Except as hereinafter provided, no person, firm, co-
2 partnership or corporation shall offer for sale, possess,
3 expose for sale, sell at retail, keep with intent to sell at
4 retail, or use or explode any fireworks: *Provided*, That
5 the state fire marshal may adopt reasonable rules and
6 regulations for the granting of permits for the super-
7 vised displays of fireworks by municipalities, fair
8 associations, amusement parks, and other organizations

9 or groups of individuals. The state fire marshal shall
10 have the authority to charge a fee of ten dollars to each
11 applicant requesting a license to be a pyrotechnic
12 operator as set forth in this article. The state fire
13 marshal shall charge a scaled fee for all applications
14 requesting permits to establish a pyrotechnics display as
15 provided in this section. All fees required to be paid by
16 the provisions of this section shall be paid to the state
17 fire marshal and thereafter deposited by him into a
18 special account for the operation of the state fire
19 commission. Such permits may be granted upon appli-
20 cation to said state fire marshal and after approval of
21 the local police and fire authorities of the community
22 wherein the display is proposed to be held as provided
23 herein and the filing of a bond by the applicant as
24 provided hereinafter. Every such display shall be
25 handled by a competent operator licensed or certified as
26 to competency by the state fire marshal and shall be of
27 such composition, character, and so located, discharged
28 or fired as in the opinion of the chief of the fire
29 department, after proper inspection, and of the chief of
30 police as to not be hazardous to property or endanger
31 any person or persons. After such privilege shall have
32 been granted, the sale, possession, use and distribution
33 of fireworks for such display shall be lawful for that
34 purpose only. No permit granted hereunder shall be
35 transferable.

36 The governing body or chief executive authority of the
37 municipality shall require a bond from the licensee in
38 a sum not less than one thousand dollars conditioned on
39 compliance with the provisions of this article and the
40 regulations of the state fire commission: *Provided*, That
41 no municipality shall be required to file such bond.

42 Before any permit for a pyrotechnic display shall be
43 issued, the person, firm or corporation making applica-
44 tion therefor shall furnish proof of financial responsibil-
45 ity to satisfy claims for damages to property or personal
46 injuries arising out of any act or omission on the part
47 of such person, firm or corporation or any agent or
48 employee thereof, in such amount, character and form

49 as the state fire marshal determines to be necessary for
50 the protection of the public.

ARTICLE 3B. SUPERVISION OF ELECTRICIANS.

§29-3B-1. Declaration of purpose.

§29-3B-2. Necessity of license; definitions.

§29-3B-3. Exemptions; nonapplicability of license requirements.

§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for license; nontransferability and nonassignability of licenses; expiration of license; renewal.

§29-3B-5. Rules; applications and examinations; fees.

§29-3B-6. License without examination; fees.

§29-3B-7. Denial of license; suspension and revocation of license.

§29-3B-8. Effect of noncompliance with article; failure to obtain license.

§29-3B-9. Nonapplicability of local ordinances; exclusive license.

§29-3B-10. Disposition of fees, fines and other receipts.

§29-3B-1. Declaration of purpose.

1 This article is enacted to protect the health, safety and
2 welfare of the public as well as public and private
3 property by assuring the competence of those who
4 perform electrical work through licensure by the state
5 fire marshal of the state fire commission.

§29-3B-2. Necessity of license; definitions.

1 After the effective date of this article, no electrical
2 work may be performed, offered or engaged in for
3 compensation or hire within the state of West Virginia
4 by any person, firm or corporation unless such person,
5 firm or corporation possesses a license and a certificate
6 therefor issued by the state fire marshal in accordance
7 with this article, and a copy of such license is posted on
8 any job in which electrical work is being performed for
9 hire.

10 As used in this article:

11 (a) "Apprentice electrician" means a person with
12 interest in and an aptitude for performing electrical
13 work but who alone is not capable of installing wires,
14 conduits, apparatus, equipment, fixtures and other
15 appliances.

16 (b) "Electrical contractor" means a person, firm or
17 corporation who engages in the business of electrical
18 work or employs master electricians, electricians,

19 apprentice electricians or helpers for the construction,
20 alteration or repair of any electrical wiring, equipment
21 or systems for the purposes of furnishing heat, light or
22 power.

23 (c) "Electrical work" means the installation of wires,
24 conduits, apparatus, fixtures, other appliances, equip-
25 ment or systems for transmitting, carrying or using
26 electricity for light, heat or power purposes.

27 (d) "Journeyman electrician" means a person qualified
28 by at least two years of electrical work experience to do
29 any work installing wires, conduits, apparatus, equip-
30 ment, fixtures and other appliances subject to supervi-
31 sion by a master electrician.

32 (e) "License" means a valid and current certificate of
33 competency issued by the state fire marshal.

34 (f) "Master electrician" means a person with at least
35 five years of electrical work experience, including
36 experience in all phases of electrical wiring and
37 installation, who is competent to instruct and supervise
38 the electrical work of journeyman electricians and
39 apprentice electricians.

§29-3B-3. Exemptions; nonapplicability of license requirements.

1 This article does not apply to and no license may be
2 required for (a) a person who performs electrical work
3 with respect to any property owned or leased by such
4 person; (b) a person who performs electrical work at any
5 manufacturing plant or other industrial establishment
6 as an employee of the person, firm or corporation
7 operating such plant or establishment; (c) a person who
8 performs electrical work while employed by an em-
9 ployer who engages in the business of selling appliances
10 at retail, so long as such electrical work is performed
11 incident to the installation or repair of appliances sold
12 by the employer; (d) a person who, while employed by
13 a public utility or its affiliate, performs electrical work
14 in connection with the furnishing of public utility
15 service; or (e) any government employee.

§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for license; nontransferability and nonassignability of licenses; expiration of license; renewal.

1 (a) The following three classes of license may be issued
2 by the state fire marshal: "Master electrician license,"
3 "journeyman electrician's license" and "apprentice
4 electrician license."

5 (b) The state fire marshal shall issue the appropriate
6 class of license to a person, firm or corporation upon a
7 finding that such person, firm or corporation possesses
8 the qualifications for the class of license to be issued.

9 (c) The qualifications for each class of license to be
10 issued are as follows:

11 (1) For a "master electrician license" a person must
12 have five years of experience in electrical work of such
13 breadth, independence and quality that such work
14 indicates that the applicant is competent to perform all
15 types of electrical work and can direct and instruct
16 journeyman electricians and apprentice electricians in
17 the performance of electrical work. Such applicant, or
18 a member of a firm or an officer of a corporation if the
19 applicant be a firm or corporation, must also pass the
20 master electrician examination given by the state fire
21 marshal with a grade of eighty percent correct or better;

22 (2) For a "journeyman electrician's license," a person
23 must have at least two years of experience in perform-
24 ing electrical work under the direction or instruction of
25 a master electrician or must have completed a formal
26 apprentice program providing actual electrical work
27 experience and training conducted by one or more
28 master electricians. Such applicant must also pass the
29 journeyman electrician's examination given by the state
30 fire marshal with a grade of eighty percent correct or
31 better;

32 (3) For an "apprentice electrician license," a person
33 must pass the apprentice electrician's examination given

34 by the state fire marshal with a grade of eighty percent
35 correct or better.

36 (d) (1) Certificates of license for a master electrician's
37 license issued by the state fire marshal shall specify the
38 name of the person, firm or corporation so qualifying
39 and the name of the person, who in the case of a firm
40 shall be one of its members and in the case of a
41 corporation shall be one of its officers, passing the
42 master electrician examination.

43 (2) Licenses issued to journeyman electricians and
44 apprentice electricians shall specify the name of the
45 person who is thereby authorized to perform electrical
46 work or, in the case of apprentice electricians, to work
47 with other classes of electricians to perform electrical
48 work.

49 (e) No license issued under this article is assignable
50 or transferable.

51 (f) All licenses issued by the state fire marshal shall
52 expire on the thirtieth day of June following the year
53 of issue or renewal.

54 (g) (1) Each expiring license may be renewed without
55 need for examination and without limit as to the number
56 of times renewed, for the same class of license previously
57 issued and for the same person, firm or corporation to
58 whom it was originally issued upon payment to the state
59 fire marshal of a renewal fee of fifty dollars if such
60 application for renewal and payment of such fee is made
61 before the date of expiration of the license.

62 (2) In the case of a failure to renew a license on or
63 before the thirtieth day of June the person named in the
64 license may, upon payment of the renewal fee and an
65 additional fee of fifteen dollars, receive from the state
66 fire marshal a deferred renewal of such license which
67 shall expire on the thirtieth day of June in the ensuing
68 year. No person, firm or corporation may perform
69 electrical work upon expiration of such person's, firm's
70 or corporation's license until a deferred renewal for such
71 license is issued by the state fire marshal even if such
72 person, firm or corporation has applied for the deferred
73 renewal of such license.

§29-3B-5. Rules; applications and examinations; fees.

1 (a) The state fire marshal shall promulgate necessary
2 rules pursuant to the provisions of chapter twenty-nine-
3 a of this code to implement the provisions of this article.
4 Rules adopted by the state fire marshal and presently
5 in effect shall remain in effect until and unless the state
6 fire marshal adopts new rules, and the state fire
7 marshal may adopt any or all of the rules presently in
8 effect.

9 (b) The state fire marshal shall prepare and arrange
10 for the receipt of applications from those who intend to
11 perform electrical work in the state of West Virginia.
12 Such application shall be sufficiently detailed to enable
13 the state fire marshal to determine the presence or
14 absence of an applicant's qualifications for a license of
15 a particular class. The state fire marshal may, if he
16 considers it necessary, require applicants to supply
17 affidavits or other documents attesting to the applicant's
18 qualifications from past employers, other electricians,
19 engineers and others with knowledge of the applicant's
20 qualifications. The state fire marshal may make such
21 other inquiries as he considers necessary to determine
22 the qualifications of the applicant. An applicant
23 expressly consents to such inquiries by the state fire
24 marshal by his application.

25 (c) The state fire marshal shall prepare and arrange
26 for the giving of examinations to all applicants for
27 licensure as master electricians, journeyman electri-
28 cians and apprentice electricians. There shall be a
29 separate and different examination for each class of
30 license, appropriate in subject matter, difficulty and
31 depth of understanding for each class. All examinations
32 shall be based on and derived from the national electric
33 code as promulgated from time to time by the national
34 fire protection association. A minimum grade of eighty
35 percent correct for all examinations is necessary for
36 licensure by the state fire marshal. The examinations
37 shall be given at least four times each year. The places,
38 dates and times of such examinations shall be made
39 known by public notice issued by the state fire marshal.
40 The state fire marshal may contract with the bureau of

41 vocational, technical and adult education, state depart-
42 ment of education, to perform such examinations.

43 (d) Each person desiring to take an examination shall
44 make written application therefor at the time desig-
45 nated by and on forms prescribed by the state fire
46 marshal. The applicant shall specify the class of license
47 for which he seeks licensure. The application shall be
48 accompanied by an examination fee of twenty-five
49 dollars for licenses for master electrician or journeyman
50 electrician, or by an examination fee of ten dollars for
51 an apprentice electrician license applicant. The fee is
52 not returnable.

53 (e) An applicant who fails to make the required
54 passing score on any examination or who lacks qualifi-
55 cations for the class of license desired may retake the
56 examination or change his application to request a
57 license of a lesser class upon the payment to the state
58 fire marshal of a fee of ten dollars together with a new
59 application. Any reexamination may be taken or new
60 application may be submitted as many times as the
61 applicant desires, but each such examination or appli-
62 cation requires the payment of the additional fee of ten
63 dollars and the making of a new application to the state
64 fire marshal. When the examination is successfully
65 passed and the requisite qualifications are established
66 by the applicant, the state fire marshal shall issue the
67 appropriate license as provided above.

§29-3B-6. License without examination; fees.

1 (a) Notwithstanding the foregoing provisions of this
2 article, any applicant for a certificate of license who
3 within ninety days following the effective date of this
4 article furnishes the state fire marshal with satisfactory
5 evidence showing that such applicant is working as a
6 journeyman electrician or master electrician in this
7 state as of the effective date of this article and that he
8 has been working for a period of one year immediately
9 prior to the effective date of this article, or any applicant
10 who gives conclusive evidence of possession of a
11 certificate of competency issued by the state fire
12 marshal prior to the effective date of this article is not

13 required to take the examination described in section
14 five of this article. Such applicant shall be issued a
15 license for the class of license the applicant's qualifica-
16 tions establish.

17 (b) Such applicant who is exempt from testing is
18 nevertheless required to submit a complete application
19 on forms prescribed by the state fire marshal accompan-
20 ied by a license fee of twenty-five dollars.

21 (c) Such license issued by the state fire marshal upon
22 application without examination expires and is eligible
23 for renewal as provided in section four of this article.

**§29-3B-7. Denial of license; suspension and revocation of
license.**

1 (a) The state fire marshal shall deny a license to any
2 applicant who fails to make a passing grade on the
3 examination or who fails to establish or who lacks the
4 necessary qualifications for a license for the class of
5 license desired.

6 (b) The state fire marshal may upon complaint or his
7 own inquiry, after notice and hearing as provided by
8 article five, chapter twenty-nine-a of this code, suspend
9 or revoke the license of any person who holds a license
10 if:

11 (1) The license was granted upon an application or
12 documents supporting such application which mate-
13 rially misstated the terms of the applicant's qualifica-
14 tions or experience;

15 (2) Such person subscribed or vouched for such
16 misstatement by an applicant;

17 (3) Such person incompetently or unsafely performs
18 electrical work;

19 (4) Such person violated any statute of the state of
20 West Virginia, any rule lawfully promulgated by an
21 agency of the state of West Virginia or any ordinance
22 of any municipality or county of the state of West
23 Virginia which protects the consumer or public against
24 unfair, unsafe, unlawful or improper business practices;
25 or

26 (5) Such person fails to comply with any rule of the
27 state fire marshal promulgated to fulfill his responsibilities under this article.
28

29 (c) Any person aggrieved by an order or decision of
30 the state fire marshal under this article is entitled to
31 judicial review as provided by section eighteen, article
32 three of this chapter and by chapter twenty-nine-a of
33 this code.

§29-3B-8. Effect of noncompliance with article; failure to obtain license.

1 Any person, firm, corporation or employee thereof, or
2 any representative, member or officer of such firm or
3 corporation, individually, entering upon or engaging in
4 the business of performing any electrical work as
5 defined in this article, without obtaining the required
6 license or otherwise complying with this article, is for
7 the first offense guilty of a misdemeanor, and, upon
8 conviction thereof, shall be fined not more than one
9 hundred dollars. For a second and each subsequent
10 offense, the penalty and punishment is a fine of not less
11 than one hundred dollars nor more than five hundred
12 dollars.

13 Each day during which such electrical work is
14 performed without the required license or while in
15 noncompliance with any of the provisions of this article,
16 after official notice that such work is unlawful, is a
17 separate offense.

18 Any electrical work performed by a person, firm or
19 corporation which is determined by the state fire
20 marshal to constitute a safety or health hazard to
21 members of the public or any electrical work of an
22 extensive nature being performed by any person without
23 the required license or otherwise in noncompliance with
24 the requirements of this article or contrary to an order
25 or rule promulgated lawfully by the state fire marshal,
26 is subject to a civil action in the name of the state in
27 the circuit court of the county where such work is being
28 performed for an injunction against such person, firm
29 or corporation, enjoining such work or violation. A
30 circuit court by mandatory or prohibitory injunction

31 may compel compliance with the provisions of this
32 article, with the lawful orders of the state fire marshal
33 and with any final decision of the state fire marshal or
34 state fire commission. The state fire marshal shall be
35 represented in all such proceedings by the attorney
36 general or his assistants.

§29-3B-9. Nonapplicability of local ordinances; exclusive license.

1 After the effective date of this article no municipality,
2 local government or county may require any license or
3 other evidence of competence as an electrician from any
4 person, firm or corporation who or which holds a valid
5 and current license issued pursuant to this article, as a
6 condition precedent to permission for the performance
7 of electrical work in such municipality, local govern-
8 ment jurisdiction or county.

§29-3B-10. Disposition of fees, fines and other receipts.

1 All fees or other moneys received as a result of actions
2 under this article shall be paid to the state fire marshal.
3 Such receipts shall be deposited by him in a special
4 account with the state treasurer for the use of the state
5 fire marshal in administering this article as provided in
6 subsection (c), section twelve-b, article three of this
7 chapter.

CHAPTER 80

(Com. Sub. for H. B. 2333—By Delegates Otte and Givens)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen-a, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the fire prevention and control act; smoke detectors in one and two-family dwellings; requiring operational smoke detectors in all new one and two-family dwellings completed after the first day of July, one thousand nine hundred ninety; deleting certain provisions with respect

to mobile homes and exempting "manufactured homes" from the provisions thereof; and continuing and increasing the penalties for violations of this section.

Be it enacted by the Legislature of West Virginia:

That section sixteen-a, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-16a. Smoke detectors in one and two-family dwellings; penalty.

1 (a) Within all one and two-family dwellings which are
2 not occupied by the owner thereof, and within all one
3 and two-family dwellings completed after the first day
4 of July, one thousand nine hundred ninety, an opera-
5 tional smoke detector shall be installed outside of each
6 separate sleeping area in the immediate vicinity of the
7 sleeping area: *Provided*, That the provisions of this
8 section shall not apply to any "manufactured home" as
9 that term is defined in subsection (j), section two, article
10 nine, chapter twenty-one of this code. Such smoke
11 detector shall be capable of sensing visible or invisible
12 particles of combustion and shall meet the specifications
13 and be installed as provided for in the National Fire
14 Protection Association Standard 74, "Standard for the
15 Installation, Maintenance and Use of Household Fire
16 Warning Equipment," 1984 edition, and in the manufac-
17 turer's specifications. When activated, the smoke
18 detector shall provide an alarm suitable to warn the
19 occupants of the danger of fire.

20 (b) The owner of each dwelling described in subsec-
21 tion (a) of this section shall provide, install and replace
22 the operational smoke detectors required by this section.
23 So as to assure that the smoke detector continues to be
24 operational, in each dwelling described in subsection (a)
25 which is not occupied by the owner thereof, the tenant
26 in any such dwelling shall perform routine maintenance
27 on the smoke detectors within such dwelling.

28 (c) Where a dwelling is not occupied by the owner and
29 is occupied by an individual who is deaf or hearing

30 impaired, the owner shall, upon written request by or
31 on behalf of such individual, provide and install a smoke
32 detector with a light signal sufficient to warn the deaf
33 or hearing-impaired individual of the danger of fire.

34 (d) An automatic fire sprinkler system installed in
35 accordance with the National Fire Protection Association
36 Standard 13D, "Standard for the Installation of
37 Sprinkler Systems in Residential Occupancies," 1983
38 edition, may be provided in lieu of smoke detectors.

39 (e) After investigating a fire in any dwelling described in
40 subsection (a) of this section, the local
41 investigating authority shall issue to the owner a smoke
42 detector installation order in the absence of the required
43 smoke detectors.

44 (f) Any person who violates any provision of this
45 section is guilty of a misdemeanor, and, upon conviction
46 thereof, shall be fined not less than fifty dollars nor
47 more than one hundred dollars.

48 (g) A violation of this section shall not be deemed by
49 virtue of such violation to constitute evidence of
50 negligence or contributory negligence or comparative
51 negligence in any civil action or proceeding for
52 damages.

53 (h) A violation of this section shall not constitute a
54 defense in any civil action or proceeding involving any
55 insurance policy.

56 (i) Nothing in this section shall be construed to limit
57 the rights of any political subdivision in this state to
58 enact laws imposing upon owners of any dwelling
59 described in subsection (a) of this section a greater duty
60 with regard to the installation, repair and replacement
61 of the smoke detectors than is required by this section.

62 (j) Owners of dwellings described in subsection (a)
63 shall comply with the provisions of this section no later
64 than the first day of July, one thousand nine hundred
65 eighty-five, except as may be otherwise specified in said
66 subsection (a).

CHAPTER 81

(Com. Sub. for S. B. 3—By Senator Hylton)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-b, relating to enabling the conveyance of Grandview State Park to the National Park Service of the government of the United States of America.

Be it enacted by the Legislature of West Virginia:

That article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twelve-b, to read as follows:

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-12b. Conveyance of Grandview State Park to the National Park Service; governor, director of the department of natural resources and director of the department of commerce.

1 The governor and the director of the department of
2 natural resources may convey, within one year of the
3 effective date of this section, the lands and property of
4 Grandview State Park to the National Park Service of
5 the government of the United States of America:
6 *Provided*, That the National Park Service agrees to
7 accept the conveyance: *Provided, however*, That the
8 department of natural resources shall hold public
9 hearings prior to making said conveyance. At least one
10 public hearing shall be held in the county where the
11 park is located.

12 The commissioner of the department of commerce
13 shall cooperate with and aid the department of natural
14 resources in the conveyance. The conveyance is subject
15 to the provisions of article one, chapter twenty of the
16 code of West Virginia, one thousand nine hundred
17 thirty-one, as amended.

CHAPTER 82

(Com. Sub. for H. B. 2612—By Delegates M. Burke and White)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to conversion of hospital acute beds to skilled nursing beds.

Be it enacted by the Legislature of West Virginia:

That article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-a, to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-4a. Conversion of hospital acute beds to skilled nursing beds.

- 1 (a) Legislative findings and purpose.—The Legisla-
- 2 ture hereby finds and declares that a need exists for
- 3 skilled nursing health care beds in this state due to a
- 4 shortage of existing facilities with adequate bed
- 5 capacity and lack of willingness to provide such services;
- 6 that patients in need of skilled nursing services have
- 7 sometimes been retained in an inappropriate level of
- 8 care facility; that such practices have resulted in
- 9 malutilization of health care facilities and resources;
- 10 that there currently exists a surplus of acute care beds
- 11 in hospitals, particularly those in rural areas within this
- 12 state; that the surplus of acute care beds is, for the
- 13 foreseeable future, permanent in nature; that the same
- 14 excess capacity of acute care beds promotes economic
- 15 inefficiencies in operation while failing to meet com-
- 16 munity needs; that nursing homes are unable under
- 17 subsection (h), section five of this article, to add
- 18 intermediate or dually certified beds to skilled nursing
- 19 beds at the present time in numbers in excess of ten
- 20 percent or not more than ten beds, whichever is less; and
- 21 that remedial action by the Legislature is necessary to

22 effectuate relief of these problems to promote the health
23 and welfare of the citizens of the state by allowing, in
24 certain instances, for the conversion of acute care beds
25 to skilled nursing beds by hospitals, but with no increase
26 in overall hospital bed capacity.

27 (b) Notwithstanding the provisions of subsection (h),
28 section five of this article, and, further, notwithstanding
29 the provisions of subsection (d), section three of this
30 article, the state agency shall adopt rules pursuant to
31 section eight of this article, to exempt from review the
32 conversion of acute care beds to skilled nursing care
33 beds by a licensed hospital by the state department of
34 health if the hospital meets the following conditions:

35 (1) It is located in a nonmetropolitan statistical area
36 as defined by the bureau of census of the federal
37 government;

38 (2) It has experienced an average occupancy rate of
39 less than fifty percent for the twelve months preceding
40 the date of request for this exemption; and

41 (3) The nursing home service area within which the
42 hospital is located is under the bed ceiling as calculated
43 by the thirty beds per thousand population formula as
44 set forth in the long-term care chapter of the state
45 health plan, except for the purposes of this article
46 existing nursing home beds shall be used in the
47 calculation.

48 (c) The state agency shall include in its rules require-
49 ments that:

50 (1) In converting beds, the hospital must change one
51 acute care bed into one skilled nursing care bed;

52 (2) All acute care beds converted shall be perman-
53 ently deleted from the hospital's acute care bed comple-
54 ment and the hospital may not thereafter add, by
55 conversion or otherwise, acute care beds to its bed
56 complement without satisfying the requirements of
57 subsection (d), section three of this article, for which
58 purposes such an addition, whether by conversion or
59 otherwise, such be considered a substantial change to
60 the bed capacity of the hospital notwithstanding the

61 definition of that term found in subsection (ee), section
62 two of this article;

63 (3) The hospital shall meet all applicable federal and
64 state licensing requirements for the provisions of skilled
65 nursing services including a requirement that all skilled
66 care beds created under this exemption shall be located
67 in distinct-part, long-term care units;

68 (4) No hospital is permitted to convert more than
69 twenty-five percent of its licensed bed capacity in any
70 twenty-four month period pursuant to this exemption;
71 however, in the event that subsection (h), section five of
72 this article, is repealed and to the extent that other
73 methods of converting acute care beds are available
74 under this article, the hospital may request certificate
75 of need approval of such conversions;

76 (5) The hospital shall undergo substantial compliance
77 review of a conversion under this exemption under such
78 terms and at such a time as set by the state agency in
79 its rules.

80 (d) Nothing in this section negatively affects the
81 rights of inspection and certification which are else-
82 where required by federal law or regulations or by this
83 code or duly adopted regulation of an authorized state
84 entity.

CHAPTER 83

(Com. Sub. for H. B. 2510—By Delegates Riggs and Minard)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-g, relating to federal "WIC" program; requiring banks in the state to accept WIC vouchers or coupons from vendors; requiring state health director to deposit WIC funds in state bank and providing for method of selection of bank; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-g, to read as follows:

**ARTICLE 2G. SPECIAL SUPPLEMENTARY FOOD PROGRAM
FOR WOMEN, INFANTS AND CHILDREN (WIC).**

§16-2G-1. Voucher or coupon redemption and payment.

1 With respect to the vouchers or coupons authorized by
2 the department of health in the administration of the
3 special supplementary food program for women, infants
4 and children, commonly known as the WIC program,
5 under the auspices and guidelines of the United States
6 department of agriculture, such vouchers or coupons,
7 when received by a vendor from a holder thereof in
8 exchange for food, food stuffs, or authorized goods or
9 services, may be deposited by the said vendor in any
10 federally insured bank in this state for collection and
11 payment thereof, and such bank shall accept the same
12 as equivalent to a negotiable instrument from a holder
13 in due course pursuant to chapter forty-six of this code,
14 and shall collect the funds for such vouchers or coupons
15 so received.

16 All moneys received from the United States depart-
17 ment of agriculture under said program, except for
18 moneys to be used for administration, shall be deposited
19 by the state health director in a special account in a
20 federally insured bank in this state. The director shall
21 select the bank by competitive bidding in the same
22 manner as the state treasurer selects depository banks
23 for state funds, subject to applicable federal laws or
24 regulations governing such selection.

25 The provisions of this section shall take effect on the
26 first day of April, one thousand nine hundred ninety,
27 except that the director shall commence procedures for
28 the selection of the bank and for implementation of the
29 other provisions of this section upon the passage hereof.

30 Nothing in this section shall make such vouchers or

31 coupons negotiable instruments for any purpose other
32 than expressly set forth herein or as permitted by
33 applicable federal laws or regulations.

CHAPTER 84

(H. B. 2760—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six, ten and eleven, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, three, five and twenty, article twenty-nine-a of said chapter, relating to nursing home, personal care home and residential board and care home licensure; application; fees; duration; renewal; certified beds; reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; license limitation; suspension; revocation; continuation of disciplinary proceedings; closure; transfer of patients; appointment of temporary management; assessment of interest, collection thereof; promulgation of regulations to conform to federal requirements; hearings; powers of the West Virginia Hospital Finance Authority; definitions of hospitals; and certificates of need.

Be it enacted by the Legislature of West Virginia:

That sections six, ten and eleven, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections two, three, five and twenty, article twenty-nine-a of said chapter be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

Article

5C. Nursing and Personal Care Homes and Residential Board and Care Homes.

29A. West Virginia Hospital Finance Authority Act.

ARTICLE 5C. NURSING AND PERSONAL CARE HOMES AND RESIDENTIAL BOARD AND CARE HOMES.

§16-5C-6. License required; application; fees; duration; renewal.

§16-5C-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.

§16-5C-11. License limitation, suspension, revocation; continuation of disciplinary proceedings; closure, transfer of patients, appointment of temporary management; assessment of interest; collection of assessments; promulgation of regulations to conform with federal requirements; hearings.

§16-5C-6. License required; application; fees; duration; renewal.

1 Subject to the provisions of section seventeen of this
2 article, no person may establish, operate, maintain, offer
3 or advertise a nursing home, personal care home, or
4 residential board and care home within this state unless
5 and until he obtains a valid license therefor as hereinafter
6 provided, which license remains unsuspended,
7 unrevoked and unexpired. No public official or em-
8 ployee may place any person in, or recommend that any
9 person be placed in, or directly or indirectly cause any
10 person to be placed in, any facility, as defined in section
11 two of this article, which is being operated without a
12 valid license from the director. The procedure for
13 obtaining a license shall be as follows:

14 (a) The applicant shall submit an application to the
15 director on a form to be prescribed by the director,
16 containing such information as may be necessary to
17 show that the applicant is in compliance with the
18 standards for nursing homes, personal care homes, or
19 residential board and care homes as established by this
20 article and the rules and regulations lawfully promul-
21 gated by the board of health hereunder. The application
22 and any exhibits thereto shall provide the following
23 information:

24 (1) The name and address of the applicant;

25 (2) The name, address and principal occupation (i) of
26 each person who, as a stockholder or otherwise, has a
27 proprietary interest of ten percent or more in the
28 applicant, (ii) of each officer and director of a corporate
29 applicant, (iii) of each trustee and beneficiary of an

30 applicant which is a trust, and (iv) where a corporation
31 has a proprietary interest of fifty percent or more in an
32 applicant, the name, address and principal occupation
33 of each officer and director of such corporation;

34 (3) The name and address of the owner of the
35 premises of the facility or proposed facility, if he is a
36 different person from the applicant, and in such case,
37 the name and address (i) of each person who, as a
38 stockholder or otherwise, has a proprietary interest of
39 ten percent or more in such owner, (ii) of each officer
40 and director of a corporate applicant, (iii) of each trustee
41 and beneficiary of such owner if he is a trust, and (iv)
42 where a corporation has a proprietary interest of fifty
43 percent or more in such owner, the name and address
44 of each officer and director of such corporation;

45 (4) Where the applicant is the lessee or the assignee
46 of the facility or the premises of the proposed facility,
47 a signed copy of the lease and any assignment thereof;

48 (5) The name and address of the facility or the
49 premises of the proposed facility;

50 (6) The type of institution to be operated;

51 (7) The proposed bed quota of the facility and the
52 proposed bed quota of each unit thereof;

53 (8) (i) An organizational plan for the facility indicat-
54 ing the number of persons employed or to be employed,
55 the positions and duties of all employees, (ii) the name
56 and address of the individual who is to serve as
57 administrator, and (iii) such evidence of compliance
58 with applicable laws and regulations governing zoning,
59 buildings, safety, fire prevention and sanitation as the
60 director may require;

61 (9) Such additional information as the director may
62 require; and

63 (10) Assurances that the nursing home was reviewed
64 and found to be needed under the provisions of article
65 two-d of this chapter.

66 (b) Upon receipt and review of an application for
67 license made pursuant to subdivision (a) of this section,

68 and inspection of the applicant facility pursuant to
69 section ten of this article, the director shall issue a
70 license if he finds:

71 (1) That an individual applicant, and every partner,
72 trustee, officer, director and controlling person of an
73 applicant which is not an individual, be a person
74 responsible and suitable to operate or to direct or
75 participate in the operation of a facility by virtue of
76 financial capacity, appropriate business or professional
77 experience, a record of compliance with lawful orders
78 of the department (if any) and lack of revocation of a
79 license during the previous five years;

80 (2) That the facility be under the supervision of an
81 administrator who is qualified by training and expe-
82 rience: *Provided*, That every facility classified as a
83 nursing home shall have an administrator licensed
84 pursuant to the provisions of article twenty-five, chapter
85 thirty of this code; and

86 (3) That the facility is in substantial compliance with
87 standards established pursuant to section five of this
88 article, and such other requirements for a license as the
89 board of health may establish by regulation under this
90 article.

91 Any license granted by the director shall state the
92 maximum bed capacity for which it is granted, the date
93 the license was issued, the expiration date, and the
94 rating assigned to the facility pursuant to section five
95 of this article. Such licenses shall be issued for a period
96 not to exceed fifteen months for nursing homes and for
97 a period of not to exceed one year for personal care
98 homes and residential board and care homes: *Provided*,
99 That any such license in effect for which timely
100 application for renewal, together with payment of the
101 proper fee has been made to the state department of
102 health in conformance with the provisions of this article
103 and the rules and regulations issued thereunder, and
104 prior to the expiration date of such license, shall
105 continue in effect until (a) one year following the
106 expiration date of such license, or (b) the date of the
107 revocation or suspension of such license pursuant to the

108 provisions of this article, or (c) the date of issuance of
109 a new license, whichever date first occurs. Each license
110 shall be issued only for the premises and persons named
111 in the application and shall not be transferable or
112 assignable: *Provided, however,* That in the case of the
113 transfer of ownership of a facility with an unexpired
114 license, the application of the new owner for a license
115 shall have the effect of a license for a period of three
116 months when filed with the director. Every license shall
117 be posted in a conspicuous place in the facility for which
118 it is issued so as to be accessible to and in plain view
119 of all patients and visitors of the facility.

120 (c) An original license shall be renewable, conditioned
121 upon the licensee filing timely application for the
122 extension of the term of the license accompanied by the
123 fee, and contingent upon evidence of compliance with
124 the provisions of this article and regulations promul-
125 gated by the board of health hereunder: *Provided,* That
126 notwithstanding the requirements of other sections of
127 this article, the director may deem as evidence of
128 compliance with such provisions and regulations the
129 certification of nursing home beds under the medicare
130 or medicaid requirements of titles eighteen or nineteen
131 of the Social Security Act, Title 42, United States Code,
132 sections 1395 and 1396, et seq. Any such application for
133 renewal of a license shall include a report by the licensee
134 in such form and containing such information as shall
135 be prescribed by the director, including the following:

136 (1) A balance sheet of the facility as of the end of its
137 fiscal year, setting forth assets and liabilities at such
138 date, including all capital, surplus, reserve, depreciation
139 and similar accounts;

140 (2) A statement of operations of the facility as of the
141 end of its fiscal year, setting forth all revenues,
142 expenses, taxes, extraordinary items and other credits
143 or charges; and

144 (3) A statement of any changes in the name, address,
145 management or ownership information on file with the
146 director. All holders of facility licenses as of the effective
147 date of this article shall include, in the first application
148 for renewal filed thereafter, such information as is

149 required for initial applicants under the provisions of
150 subsection (a) of this section.

151 (d) In the case of an application for a renewal license,
152 if all requirements of section five of this article are not
153 met, the director may in his discretion issue a provi-
154 sional license, provided that care given in the facility is
155 adequate for patient needs and the facility has demon-
156 strated improvement and evidences potential for
157 substantial compliance within the term of said license:
158 *Provided*, That a provisional renewal may not be issued
159 for a period greater than one year, shall not be renewed,
160 and that no such license shall be issued to any facility
161 with uncorrected violations of any Class I standard, as
162 defined in subsection (c), section five of this article.

163 (e) A nonrefundable application fee in the amount of
164 one hundred dollars for an original nursing home license
165 or fifty dollars for an original personal care facility or
166 residential board and care home license shall be paid at
167 the time application is made for such license. Direct
168 costs of initial licensure inspections or inspections for
169 changes in licensed bed capacity shall be borne by the
170 applicant and shall be received by the director prior to
171 the issuance of an initial or amended license. The license
172 fee for renewal of a license shall be at the rate of eight
173 dollars per bed per year for nursing homes, and four
174 dollars per bed per year for personal care homes, and
175 two dollars per bed per year for residential board and
176 care homes, except the annual rate per bed may be
177 assessed for licenses issued for less than one year. The
178 director may annually adjust the licensure fees for
179 inflation based upon the consumer price index. The bed
180 capacity for the holder of each license shall be deter-
181 mined by the director. All such license fees shall be due
182 and payable to the director, annually, and in such
183 manner set forth in the rules and regulations promul-
184 gated by the board of health. Such fee and application
185 shall be submitted to the director who shall retain both
186 the application and fee pending final action on the
187 application. All fees received by the director under the
188 provisions of this article shall be deposited in accordance
189 with section thirteen, article one of this chapter.

§16-5C-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.

1 (a) Reports of all inspections made pursuant to section
2 nine of this article shall be in writing and filed with the
3 director, and shall list all deficiencies in the facility's
4 compliance with the provisions of this article and the
5 regulations adopted by the board of health hereunder.
6 The director shall send a copy of such report to the
7 facility and shall specify a time within which the facility
8 shall submit a plan for correction of such deficiencies,
9 which plan shall be approved, rejected or modified by
10 the director. The surveyors shall allow audio taping of
11 the exit conference for both licensure and certification
12 inspections with all costs directly associated with such
13 taping to be paid by the facility.

14 (b) With regard to a facility with deficiencies which
15 is not certified under titles eighteen or nineteen of the
16 Social Security Act and upon such facility's failure to
17 submit a plan of correction which is approved by the
18 director, or to correct any deficiency within the time
19 specified in an approved plan of correction, the director
20 may assess civil penalties as hereinafter provided or
21 may initiate any other legal or disciplinary action as
22 provided by this article.

23 (c) Nothing in this section shall be construed to
24 prohibit the director from enforcing a regulation,
25 administratively or in court, without first affording
26 formal opportunity to make correction under this
27 section, where, in the opinion of the director, the
28 violation of such regulation jeopardizes the health or
29 safety of patients or where the violation of such
30 regulation is the second or subsequent such violation
31 occurring during a period of twelve full months.

32 (d) Civil penalties assessed against facilities not
33 certified under titles eighteen or nineteen of the Social
34 Security Act shall be classified according to the nature
35 of the violation as defined in subsection (c), section five
36 of this article and regulations promulgated thereunder
37 by the board of health, as follows: For each violation of
38 a Class I standard, a civil penalty of not less than one

39 hundred nor more than one thousand dollars shall be
40 imposed; for each violation of a Class II standard, a civil
41 penalty of not less than fifty nor more than one hundred
42 dollars shall be imposed; for each violation of a Class III
43 standard, a civil penalty of not less than twenty-five nor
44 more than fifty dollars shall be imposed. Each day a
45 violation continues, after the date by which correction
46 was required under an approved plan of correction or,
47 if an approved plan of correction is not submitted, the
48 date on which such plan was due, shall constitute a
49 separate violation.

50 (e) Within thirty days after the completion of an
51 inspection for a facility certified under titles eighteen or
52 nineteen of the Social Security Act, the director may
53 assess civil money penalties against such facility when
54 the facility is not in compliance with federal regulatory
55 level A or B certification requirements as contained in
56 Title 42, Code of Federal Regulations, part 483. In
57 determining whether to assess a penalty, and the
58 amount of penalty to be assessed, the director shall
59 consider how serious the noncompliance with such level
60 A or B requirement is in relation to direct patient care
61 and safety, the number of patients such a noncompliance
62 is likely to affect, whether such a noncompliance was a
63 noncompliance during the previous inspection, the
64 opportunity that the facility has had to correct the
65 noncompliance, and any additional factors that may be
66 relevant. For each day in which a facility is, or was, out
67 of compliance with such level A or B requirements,
68 penalties shall not exceed one hundred dollars for each
69 such level B requirement and shall not exceed five
70 hundred dollars for each such level A requirement. If
71 a facility is out of compliance on two successive
72 inspections with such a level A or B requirement, the
73 director may, and in the case of immediate jeopardy to
74 the health, safety, welfare or rights of patients the
75 director shall, for each day of noncompliance, assess a
76 civil penalty: Not to exceed two hundred dollars for each
77 such level B requirement which is, or was, out of
78 compliance; and, not to exceed one thousand dollars for
79 each such level A requirement which is, or was, out of
80 compliance. If a facility is out of compliance on three

81 or more successive inspections with such a level A or B
82 requirement, the director shall for each day of noncom-
83 pliance assess a civil penalty: Not to exceed six hundred
84 dollars for each such level B requirement which is, or
85 was, out of compliance; and, not to exceed three
86 thousand dollars for each such level A requirement
87 which is, or was, out of compliance.

88 If the director and the United States secretary of
89 health and human services determines that a facility's
90 failure to meet federal medicaid certification require-
91 ments under title nineteen of the Social Security Act
92 does not jeopardize the health or safety of its patients
93 and if such secretary establishes one or more remedies
94 which are additional or alternative to the remedy of
95 terminating the facility's participation under the state
96 medicaid plan, any civil money penalty assessed under
97 this subsection shall be withdrawn.

98 (f) The director shall impose a civil penalty of not
99 more than one thousand dollars against an individual
100 who willfully and knowingly certifies under section
101 1919(b)(3)(B)(i) of title nineteen of the Social Security
102 Act, or under section 1819(b)(3)(B)(i) of title eighteen of
103 such Act, a material and false statement in a patient
104 assessment. Such penalty shall be imposed with respect
105 to each such patient assessment. The director shall
106 impose a civil penalty of not more than five thousand
107 dollars against an individual who willfully and know-
108 ingly causes another individual to certify under either
109 such section of the Social Security Act a material and
110 false statement in a patient assessment. Such penalty
111 shall be imposed with respect to each such patient
112 assessment.

113 (g) The director shall assess a civil penalty not to
114 exceed two thousand dollars against any individual who
115 notifies, or causes to be notified, a facility of the time
116 or date on which an inspection is scheduled to be
117 conducted under this article or under titles eighteen or
118 nineteen of the Social Security Act.

119 (h) If the director assesses a penalty under this
120 section, the director shall cause delivery of notice of such
121 penalty by personal service or by certified mail. Said

122 notice shall state the amount of the penalty, the action
123 or circumstance for which the penalty is assessed, the
124 requirement that the action or circumstance violates,
125 and the basis upon which the director assessed the
126 penalty and selected the amount of the penalty.

127 (i) The director shall, in a civil judicial proceeding,
128 recover any unpaid assessment which has not been
129 contested under section twelve of this article within
130 thirty days of receipt of notice of such assessment, or
131 which has been affirmed under the provisions of that
132 section and not appealed within thirty days of receipt
133 of the director's final order, or which has been affirmed
134 on judicial review, as provided in section thirteen of this
135 article. All money collected by assessments of civil
136 penalties or interest shall be paid into a special patient
137 benefit account and shall be applied by the director only
138 for the protection of the health or property of patients
139 of facilities operated within the state that the director
140 or the United States secretary of health and human
141 services find to be deficient, including payment for the
142 costs of relocation of patients to other facilities,
143 operation of a facility pending correction of deficiencies
144 or closure, and reimbursement of patients for personal
145 funds lost.

146 (j) The opportunity for a hearing on an action taken
147 under this section shall be as provided in section twelve
148 of this article. In addition to any other rights of appeal
149 conferred upon a facility pursuant to this section, a
150 facility shall have the right to request a hearing and
151 seek judicial review pursuant to sections twelve and
152 thirteen of this article to contest the citing by the
153 director of a deficiency on an inspection report,
154 irrespective of whether the deficiency results in the
155 imposition of a civil penalty.

**§16-5C-11. License limitation, suspension, revocation;
continuation of disciplinary proceedings;
closure, transfer of patients, appointment
of temporary management; assessment of
interest; collection of assessments; promul-
gation of regulations to conform with
federal requirements; hearings.**

1 (a) The director shall by order reclassify a facility, or
2 reduce the bed quota of the facility, or both, where he
3 finds upon inspection of the facility that the licensee is
4 not providing adequate care under the facility's existing
5 classification or quota, and that reclassification, reduction
6 in quota or both would place the licensee in a
7 position to render adequate care. Any notice to a licensee
8 of reclassification, reduction in quota or both shall
9 include the terms of such order, the reasons therefor,
10 and the date set for compliance.

11 (b) The director may suspend or revoke a license
12 issued under this article if he finds upon inspection that
13 there has been a substantial failure to comply with the
14 provisions of this article or the standards or regulations
15 promulgated pursuant hereto.

16 (c) Whenever a license is limited, suspended or
17 revoked pursuant to this section, the director shall file
18 a complaint stating facts constituting a ground or
19 grounds for such limitation, suspension or revocation.
20 Upon the filing of the complaint, the director shall
21 notify the licensee in writing of the filing of the
22 complaint, enclosing a copy of the complaint, and shall
23 advise the licensee of the availability of a hearing
24 pursuant to section twelve of this article. Such notice
25 and copy of the complaint shall be served on such
26 licensee by certified mail, return receipt requested.

27 (d) The suspension, expiration, forfeiture or cancella-
28 tion by operation of law or order of the director of a
29 license issued by the director, or the withdrawal of an
30 application for a license after it has been filed with the
31 director, may not deprive the director of the director's
32 authority to institute or continue a disciplinary proceed-
33 ing, or a proceeding for the denial of a license applica-
34 tion, against the licensee or applicant upon any ground
35 provided by law or to enter an order denying the license
36 application or suspending or revoking the license or
37 otherwise taking disciplinary action on any such ground.

38 (e) In addition to other remedies provided in this
39 article, upon petition from the director, a circuit court
40 may determine that a facility's deficiencies under this

41 article, or under titles eighteen or nineteen of the Social
42 Security Act, if applicable, constitute an emergency
43 immediately jeopardizing the health, safety, welfare, or
44 rights of its patients, and issue an order to:

45 (1) Close the facility;

46 (2) Transfer patients in the facility to other facilities;

47 or

48 (3) Appoint temporary management to oversee the
49 operation of the facility and to assure the health, safety,
50 welfare and rights of the facility's patients, where there
51 is a need for temporary management while:

52 (A) There is an orderly closure of the facility, or

53 (B) Improvements are made in order to bring the
54 facility into compliance with all the applicable require-
55 ments of this article and, if applicable, titles eighteen
56 and nineteen of the Social Security Act.

57 If the director petitions a circuit court for the closure
58 of a facility, the transfer of patients, or the appointment
59 of a temporary management, the circuit court shall hold
60 a hearing no later than seven days thereafter, at which
61 time the director and the licensee or operator of the
62 facility may participate and present evidence.

63 A circuit court may divest the licensee or operator of
64 possession and control of a facility in favor of a
65 temporary management. The temporary management
66 shall be responsible to the court and shall have such
67 powers and duties as the court may grant to direct all
68 acts necessary or appropriate to conserve the property
69 and promote the health, safety, welfare and rights of the
70 patients of the facility, including, but not limited to, the
71 replacement of management and staff, the hiring of
72 consultants, the making of any necessary expenditures
73 to close the facility or to repair or improve the facility
74 so as to return it to compliance with applicable
75 requirements, and the power to receive, conserve and
76 expend funds, including medicare, medicaid and other
77 payments on behalf of the licensee or operator of the
78 facility. Priority shall be given to expenditures for
79 current direct patient care or the transfer of patients.

80 The person charged with temporary management
81 shall be an officer of the court, shall not be liable for
82 conditions at the facility which existed or originated
83 prior to his appointment and shall not be personally
84 liable, except for his own gross negligence and inten-
85 tional acts which result in injuries to persons or damage
86 to property at the facility during his temporary
87 management.

88 To administer a nursing home, the temporary man-
89 agement shall employ a person licensed as a nursing
90 home administrator in West Virginia.

91 No person shall impede the operation of a temporary
92 management. There shall be an automatic stay for a
93 ninety-day period subsequent to the establishment of a
94 temporary management of any action that would
95 interfere with the functioning of the facility, including,
96 but not limited to, cancellation of insurance policies,
97 termination of utility services, attachments to working
98 capital accounts, foreclosures, evictions and reposses-
99 sions of equipment used in the facility.

100 A temporary management established for the purpose
101 of making improvements in order to bring a facility into
102 compliance with applicable requirements shall not be
103 terminated until the court has determined that the
104 facility has the management capability to ensure
105 continued compliance with all applicable requirements,
106 except if the court has not made such determination
107 within six months of the establishment of the temporary
108 management, the temporary management terminates by
109 operation of law at that time, and the facility shall be
110 closed. After the termination of the temporary manage-
111 ment, the person who was responsible for the temporary
112 management shall make an accounting to the court, and
113 after deducting from receipts the costs of the temporary
114 management, expenditures and civil penalties and
115 interest no longer subject to appeal, in that order, any
116 excess shall be paid to the licensee or operator of the
117 facility.

118 (f) The assessments for penalties and for costs of
119 actions taken under this article shall have interest

120 assessed at two percent on the last day of each month
121 after the month in which occurs the thirtieth day after
122 receipt of notice of such assessment or after the month
123 in which occurs the thirtieth day after receipt of the
124 director's final order following a hearing, whichever is
125 later. All such assessments against a facility that are
126 unpaid shall be added to the facility's licensure fee and
127 may be filed as a lien against the property of the licensee
128 or operator of the facility. Funds received from such
129 assessments shall be deposited as funds received in
130 section ten of this article.

131 (g) The board of health shall have the power to
132 promulgate emergency regulations that expand the
133 power of the director in excess of that provided in this
134 article to the extent required to comply with federal
135 requirements, but any such regulations shall expand the
136 power of the director to the minimum extent required
137 by federal requirements. Such regulations are subject to
138 the provisions of article three, chapter twenty-nine-a of
139 this code.

140 (h) The opportunity for a hearing on an action by the
141 director taken under this section shall be as provided in
142 section twelve of this article.

ARTICLE 29A. WEST VIRGINIA HOSPITAL FINANCE AUTHORITY ACT.

§16-29A-2. Declaration of policy and responsibility; purpose and intent of article; findings.

§16-29A-3. Definitions.

§16-29A-5. Powers of authority.

§16-29A-20. Certificate of need.

§16-29A-2. Declaration of policy and responsibility; purpose and intent of article; findings.

1 It is hereby declared to be the public policy of the
2 state of West Virginia and a responsibility of the state
3 of West Virginia, for the benefit of the people of the
4 state and the improvement of their health, welfare and
5 living conditions, to provide hospitals with appropriate
6 means at reasonable cost to maintain, expand, enlarge
7 and establish health care, hospital and other related
8 facilities and to provide hospitals with the ability to

9 refinance indebtedness. This article shall provide a
10 method to enable hospitals to provide or maintain at
11 reasonable cost pursuant to reasonable terms the
12 facilities, structures and services needed to accomplish
13 the purposes of this article, all to the public benefit and
14 good, to the extent and in the manner provided in this
15 article.

16 The Legislature finds and hereby declares that the
17 responsibility of the state as outlined above cannot be
18 effectively met without the hospital loan program as
19 provided for in this article.

§16-29A-3. Definitions.

1 As used in this article, unless the context clearly
2 requires a different meaning:

3 (1) "Authority" means the West Virginia hospital
4 finance authority created by section four of this article,
5 the duties, powers, responsibilities and functions of
6 which are specified in this article;

7 (2) "Board" means the West Virginia hospital finance
8 board created by section four of this article, which shall
9 manage and control the authority;

10 (3) "Bond" means a revenue bond issued by the
11 authority to effect the purposes of this article;

12 (4) "Construction" means and includes reconstruction,
13 enlargement, improvement and providing furnishings
14 or equipment;

15 (5) "Direct provider of health care" means a person or
16 organization whose primary current activity is the
17 provision of health care to individuals and includes a
18 licensed or certified physician, osteopath, dentist, nurse,
19 podiatrist or physician's assistant or an organization
20 comprised of these health professionals or employing
21 these health professionals;

22 (6) "Hospital" means a corporation, association,
23 institution or establishment for the care of those who
24 require medical treatment, which may be a public or
25 private corporation or association, or state owned or
26 operated establishment and specifically includes nurs-

27 ing homes which are licensed under chapter sixteen of
28 this code or those facilities certified under the Social
29 Security Act as intermediate care facilities for the
30 mentally retarded;

31 (7) "Hospital facilities" means any real or personal
32 property suitable and intended for, or incidental or
33 ancillary to, use by a hospital and includes: Outpatient
34 clinics; laboratories; laundries; nurses, doctors or interns
35 residences; administration buildings; facilities for
36 research directly involved with hospital care; maintenance, storage or utility facilities; parking lots and
37 garages; and all necessary, useful or related equipment,
38 furnishings and appurtenances and all lands necessary
39 or convenient as a site for the foregoing and specifically
40 includes any capital improvements to any of the
41 foregoing. "Hospital facilities" specifically includes
42 office facilities not less than eighty percent of which are
43 intended for lease to direct providers of health care and
44 which are geographically or functionally related to one
45 or more other hospital facilities, if the authority
46 determines that the financing of the office facilities is
47 necessary to accomplish the purposes of this article;
48

49 (8) "Hospital loan" means a loan made by the author-
50 ity to a hospital and specifically includes financings by
51 the authority for hospital facilities pursuant to lease-
52 purchase agreements, installment sale or other similar
53 agreements;

54 (9) "Note" means a short-term promise to pay a
55 specified amount of money, payable and secured as
56 provided pursuant to this article and issued by the
57 authority to effect the purposes of this article;

58 (10) "Project costs" means the total of the reasonable
59 or necessary costs incurred for carrying out the works
60 and undertakings for the acquisition or construction of
61 hospital facilities under this article. "Project costs"
62 includes, but is not limited to, all of the following costs:
63 The costs of acquisition or construction of the hospital
64 facilities; studies and surveys; plans, specifications,
65 architectural and engineering services; legal, organiza-
66 tion, marketing or other special services; financing,
67 acquisition, demolition, construction, equipping and site

68 development of new and rehabilitated buildings; reha-
69 bilitation, reconstruction, repair or remodeling of
70 existing buildings; interest and carrying charges during
71 construction and before full earnings are achieved and
72 operating expenses before full earnings are achieved or
73 a period of one year following the completion of
74 construction, whichever occurs first, and a reasonable
75 reserve for payment of principal of and interest on
76 bonds or notes of the authority. "Project costs" shall also
77 include reimbursement of a hospital for the foregoing
78 costs expended by a hospital from its own funds or from
79 money borrowed by the hospital for such purposes
80 before issuance and delivery of bonds or notes by the
81 authority for the purpose of providing funds to pay the
82 project costs. "Project costs" also specifically includes
83 the refinancing of any existing debt of a hospital
84 necessary in order to permit the hospital to borrow from
85 the authority and give adequate security for the hospital
86 loan. The determination of the authority with respect to
87 the necessity of refinancing and adequate security for
88 a hospital loan is conclusive;

89 (11) "Revenue" means any money or thing of value
90 collected by, or paid to, the authority as principal of or
91 interest, charges or other fees on hospital loans, or any
92 other collections on hospital loans made by the authority
93 to hospitals to finance in whole or in part the acquisition
94 or construction of any hospital facilities, or other money
95 or property which is received and may be expended for
96 or pledged as revenues pursuant to this article.

§16-29A-5. Powers of authority.

1 The authority is hereby granted, has and may exercise
2 all the powers necessary or appropriate to carry out and
3 effectuate the purposes of this article, including the
4 following:

5 (a) To sue and be sued in its own name and plead and
6 be impleaded in its own name; to have a seal and alter
7 the same at its pleasure; to make, execute and deliver
8 contracts, indentures, agreements, conveyances and
9 other instruments necessary or convenient to the
10 exercise of its powers; to adopt and, from time to time,

11 amend and repeal bylaws necessary and proper for the
12 legislation of its business and rules and regulations to
13 implement and make effective its powers and duties,
14 such rules and regulations to be promulgated in
15 accordance with the provisions of chapter twenty-nine-
16 a of this code; and to maintain a principal office. Any
17 actions against the authority shall be brought in the
18 circuit court of Kanawha County, in which the principal
19 office of the authority shall be located. When the cost
20 under any contract or agreement to be entered by the
21 authority, other than compensation for personal servi-
22 ces, involves an expenditure of more than three thou-
23 sand dollars, the authority shall make a written contract
24 with the lowest responsible bidder after public notice
25 published as a Class II legal advertisement in com-
26 pliance with the provisions of article three, chapter fifty-
27 nine of this code, the publication area for such publica-
28 tion to be the county wherein the work is to be
29 performed or which is affected by the contract, which
30 notice shall state the general character of the work and
31 the general character of the materials to be furnished,
32 the place where plans and specifications therefor may
33 be examined and the time and place of receiving bids:
34 *Provided*, That a contract, indenture or agreement for
35 a hospital loan is not subject to the foregoing require-
36 ments, and the authority may enter into such contract,
37 indenture or agreement pursuant to negotiation and
38 upon such terms and conditions and for such period as
39 it finds to be reasonable and proper under the circum-
40 stances and as necessary to best effectuate the purposes
41 of this article: *Provided, however*, That a contract or
42 agreement entered into by a hospital to which any
43 hospital loan is made is not subject to the foregoing
44 requirements. The authority may reject any and all bids.
45 A bond with good and sufficient surety, approved by the
46 authority, shall be required of all contractors in an
47 amount equal to at least fifty percent of the contract
48 price, conditioned upon the faithful performance of the
49 contract.

50 (b) To solicit and accept gifts, grants, loans and other
51 aids from any person, corporation or governmental
52 agency.

53 (c) To make hospital loans, to participate in the
54 making of hospital loans, to undertake commitments, to
55 execute and be the beneficiary under deeds of trust, to
56 enter into security agreements, to sell hospital loans and
57 the security therefor at public or private sale, to modify
58 or alter hospital loans and security therefor, to dis-
59 charge hospital loans and security therefor, to order a
60 trustee's sale under a deed of trust or commence an
61 action to protect or enforce a right conferred upon it by
62 a law, deed of trust, hospital loan, contract, indenture
63 or other agreement and to bid for and purchase property
64 which was the subject of a deed of trust at a trustee's
65 sale or at any other sale and to acquire or take
66 possession of that property and in that event complete,
67 administer, pay the principal of and interest on any
68 obligations incurred in connection with such property,
69 dispose of and otherwise deal with the property in a
70 manner necessary or desirable to protect the interest of
71 the authority in the property. The hospital loans made
72 by the authority may be secured by deeds of trust or
73 security agreements, as applicable, or not, as the
74 authority determines.

75 (d) To lend money to hospitals for the purpose of
76 refinancing any outstanding indebtedness of a hospital
77 if the authority determines the refinancing is necessary
78 to realize the purposes of this article. A hospital loan
79 made pursuant to this subsection shall not exceed the
80 amount of the principal of and interest and redemption
81 premium, if any, on the indebtedness to be refinanced
82 which has not been repaid, plus the marketing, financ-
83 ing, legal and other costs incurred in connection with
84 the refinancing and the issuance of bonds or notes of the
85 authority issued in whole or in part to provide funds to
86 make the hospital loan described in this subdivision,
87 including the costs of funding a bond reserve and paying
88 capitalized interest on the bonds or notes for a period
89 not to exceed one year after the issuance of such bonds
90 or notes. The determination of the authority under this
91 subsection shall be conclusive.

92 (e) To charge, impose and collect fees and charges in
93 connection with its hospital loans, commitments and

94 servicing, including reimbursement of the costs of
95 financing by the authority, service charges, insurance
96 premiums and an allocable share of the operating
97 expenses of the authority and to make provision for
98 increasing the same, if necessary, as the authority
99 determines is reasonable and approved by the board.

100 (f) To acquire, hold and dispose of real or personal
101 property necessary or appropriate for the accomplish-
102 ment of the purposes of this article.

103 (g) To procure insurance against a loss in connection
104 with its property, assets or activities.

105 (h) To borrow money for its purpose, including its
106 initial operating expense and issue its bonds or notes for
107 the money and provide for the rights of the holders of
108 the bonds or notes and to secure the bonds or notes by
109 a deed of trust on or an assignment or pledge of any or
110 all of its properties, including any part of the security
111 for its hospital loans. The state shall not be liable on any
112 bonds or notes of the authority; the bonds or notes shall
113 not be a debt of the state; and each bond or note shall
114 contain on its face a statement to that effect.

115 (i) To invest any funds not required for immediate use
116 or disbursement, at its discretion, in any of the
117 following:

118 (1) Direct obligations of, or obligations the timely
119 payment of the principal of and interest on which is
120 guaranteed by, the United States of America;

121 (2) Bonds, debentures, notes or other evidences of
122 indebtedness issued by any of the following agencies:
123 Banks for cooperatives; federal intermediate credit
124 banks; federal home loan bank system; Export-Import
125 Bank of the United States; federal farm credit banks;
126 federal land banks; federal financing banks; the Federal
127 National Mortgage Association or the Government
128 National Mortgage Association;

129 (3) Public housing bonds issued by public agencies or
130 municipalities and fully secured as to the payment of
131 both principal and interest by a pledge of annual
132 contributions under an annual contributions contract or

133 contracts with the United States of America; or
134 temporary notes issued by public agencies or municipal-
135 ities or preliminary loan notes issued by public agencies
136 or municipalities, in each case fully secured as to the
137 payment of both principal and interest by a requisition
138 or payment agreement with the United States of
139 America;

140 (4) Certificates of deposit secured by obligations of the
141 type specified in subparagraph (1);

142 (5) Direct obligations of, or obligations the timely
143 payment of the principal of and interest on which is
144 guaranteed by, the state of West Virginia;

145 (6) Direct and general obligations of any other state
146 within the territorial United States, to the payment of
147 the principal of and interest on which the full faith and
148 credit of such state is pledged: *Provided*, That at the
149 time of their purchase, such obligations are rated in
150 either of the two highest rating categories by a
151 nationally recognized bond-rating agency;

152 (7) Any fixed interest bond, note or debenture of any
153 corporation organized and operating within the United
154 States: *Provided*, That such corporation has a minimum
155 net worth of fifteen million dollars and its securities or
156 its parent corporation's securities are listed on one or
157 more of the national stock exchanges: *Provided, however*,
158 That (i) such corporation has earned a profit in eight of
159 the preceding ten fiscal years as reflected in its
160 statements, (ii) such corporation has not defaulted in the
161 payment of principal of or interest on any of its
162 outstanding funded indebtedness during its preceding
163 ten fiscal years, and (iii) the bonds, notes or debentures
164 of such corporation to be purchased are rated "AA" or
165 the equivalent thereof or better than "AA" or the
166 equivalent thereof by at least two or more nationally
167 recognized rating services such as Standard and Poor's,
168 Dun & Bradstreet or Moody's;

169 (8) Fully collateralized or insured bankers acceptan-
170 ces or time deposits drawn on and accepted by commer-
171 cial banks; and

172 (9) Repurchase agreements of commercial banks or
173 trust companies fully secured by obligations of the type
174 specified in subparagraph (1) and having on the date of
175 such agreement a fair market value equal to at least one
176 hundred percent of the principal amount of such
177 repurchase agreement.

178 (j) To engage necessary personnel and to engage the
179 services of private consultants for rendering profes-
180 sional and technical assistance and advice.

181 (k) To establish or increase reserves from moneys
182 received or to be received by the authority to secure or
183 to pay the principal of and interest on bonds issued by
184 the authority pursuant to this article.

185 (l) To lease, or lease with an option to purchase, to
186 others its real or personal property, including hospitals
187 and hospital facilities, for such rentals and upon such
188 terms and conditions as the authority may deem
189 advisable.

190 (m) To do all acts necessary and proper to carry out
191 the powers expressly granted to the authority in this
192 article.

§16-29A-20. Certificate of need.

1 Before the authority makes a hospital loan to any
2 hospital, and as a condition precedent to the authority's
3 making any such hospital loan, a certificate of need shall
4 be obtained pursuant to article two-d of this chapter, or
5 a determination shall be secured from the agency
6 issuing the certificate of need that a certificate is not
7 necessary for the hospital facilities with respect to which
8 the hospital loan is proposed to be made: *Provided*, That
9 if a certificate of need is not necessary for a specific
10 project or projects, then the health care cost review
11 authority created by section five, article twenty-nine-b
12 of this chapter must be consulted by the authority
13 concerning the availability of financial resources to both
14 repay the loan and to fund the ongoing operations of the
15 project or projects. The opinion of the health care cost
16 review authority, while not determinative on the
17 question of the issuance of the hospital loan, shall be

18 entitled to substantial weight before the authority and
19 shall be overcome only by clear and convincing evidence
20 to the contrary. This section shall not apply to refinanc-
21 ing of present indebtedness or to refunding or advance
22 refunding of bonds, notes, or for reimbursement of
23 projects costs.

CHAPTER 85

(Com. Sub. for H. B. 2253—By Delegates Pitrolo and Mezzatesta)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-j, relating to public health; regulation and licensing of clinical laboratories and laboratory technicians and technologists; providing legislative findings; defining phrase "clinical laboratory"; requiring state health director to promulgate rules; providing for certain exemptions; enumerating powers and duties of such director with respect to licensure and inspection; creating an advisory board and providing for appointment, membership and terms of office; providing for hearings and appeals from director's decisions; creating misdemeanor offense relating to certain solicitation, receipt, delivery or transmission of human material for or to unlicensed laboratories; exceptions thereto; providing a severability clause; providing for licensure and certification of laboratory technicians and technologists and rules and regulations pertaining thereto; exempting technicians and technologists so employed on effective date of act from such requirements; and providing that certain technicians and technologists shall be deemed certified.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-j, to read as follows:

ARTICLE 5J. CLINICAL LABORATORIES QUALITY ASSURANCE ACT.

- §16-5J-1. Legislative findings.
- §16-5J-2. Definition.
- §16-5J-3. Rules; recognized external standards.
- §16-5J-4. Powers and duties.
- §16-5J-5. Advisory board.
- §16-5J-6. Hearing and judicial review.
- §16-5J-7. Exemptions.
- §16-5J-8. Unlawful conduct; penalties.
- §16-5J-9. Interpretation of article; severability.
- §16-5J-10. Licensure of technicians; fee; rules and regulations.

§16-5J-1. Legislative findings.

1 The Legislature finds that the diagnosis and treat-
2 ment of human affliction is or may be largely deter-
3 mined by the results of laboratory testing and that
4 inaccurate laboratory test results endanger the health
5 and lives of the citizens of West Virginia. A due respect
6 for the citizenry of the state requires that all such
7 testing be done under the supervision of qualified and
8 competent persons having sufficient expertise and
9 experience to assure the quality and accuracy of clinical
10 laboratory testing. Further, it is imperative that
11 laboratories be regulated and licensed to ensure that the
12 intent of this article be met.

§16-5J-2. Definition.

1 The term "clinical laboratory" means any facility or
2 place, however named, for the biological, microbiolog-
3 ical, serological, chemical, immuno-hematological,
4 hematological, biophysical, cytological, pathological, or
5 other examination of materials derived from the human
6 body for the purpose of providing information for the
7 diagnosis, prevention or treatment of any disease or
8 impairment of, or the assessment of the health of human
9 beings.

§16-5J-3. Rules; recognized external standards.

1 The director of the department of health shall
2 promulgate, pursuant to chapter twenty-nine-a of this
3 code, rules required to implement this article, and such
4 rules shall specifically address, among other things,
5 training, education and experience requirements. The

6 standards to be adopted by the department of health
7 shall be equal to or higher than such standards
8 currently applicable and as established by the college of
9 American pathologists, the center for disease control,
10 American Osteopathic Board of Pathology, American
11 Osteopathic Hospital Association, the medicare program
12 or the joint commission for the accreditation of hospitals:
13 *Provided*, That any laboratory in this state accredited
14 by or certified by one of these organizations or the
15 medicare program shall be exempt from the require-
16 ments of licensure with no further inquiry by the
17 department of health, and any such accredited or
18 certified laboratory shall be exempt from the provisions
19 of this article as long as such laboratories remain so
20 accredited or certified: *Provided, however*, That all
21 laboratories shall have five years from the effective date
22 of this article to come into compliance.

§16-5J-4. Powers and duties.

1 In addition to promulgating rules specified in section
2 three of this article, the director of the department of
3 health, with the advice of the advisory board created in
4 section five of this article, has the power to:

5 (a) Adopt rules for clinical laboratory licensure;

6 (b) Establish rules for continued evaluation of labor-
7 atory testing, such rules and evaluations being at least
8 equivalent to the appropriate section of the "Clinical
9 Laboratory Improvement Act of 1967";

10 (c) Institute and administer a program of inspection
11 to ensure compliance with standards established in this
12 article and rules established pursuant to this article;

13 (d) Issue a license to those clinical laboratories which
14 meet requirements for licensure under this article;

15 (e) Set a reasonable fee for application and licensure;

16 (f) Withhold, revoke or suspend or restrict the license
17 of any clinical laboratory which fails to meet require-
18 ments for licensure or relicensure.

19 The cost of the initial inspection of any new laboratory

20 constructed after July one, one thousand nine hundred
21 ninety, shall be the responsibility of the prospective
22 licensee.

23 Within the limit of available funds, the department of
24 health shall inspect clinical laboratories on a periodic
25 basis to ensure compliance with standards and regula-
26 tions.

§16-5J-5. Advisory board.

1 There is hereby created an advisory board which shall
2 be composed of the following persons:

3 (a) Two board certified pathologists licensed and
4 currently practicing in this state;

5 (b) A board certified physician or doctor of osteo-
6 pathy, licensed and currently practicing in this state in
7 a specialty other than pathology;

8 (c) Two clinical laboratory practitioners who hold
9 professional certification from an agency acceptable to
10 the department of health. These two must have had a
11 minimum of three years experience in a clinical
12 laboratory setting during the five years preceding
13 appointment. One of the two must hold a minimum of
14 a baccalaureate degree;

15 (d) One lay person to represent the interests of the
16 people of this state.

17 The advisory board shall be appointed by the gover-
18 nor, with the advice and consent of the Senate.
19 Appointments of professional members shall be made
20 from lists of candidates submitted from among their
21 peers. These lists may be solicited from the West
22 Virginia association of pathology, the West Virginia
23 state society for medical technology, the West Virginia
24 state medical association, the West Virginia society of
25 state American medical technologists and other similar
26 professional organizations. The lists submitted shall
27 contain at least one name in excess of the number of
28 appointments to be made. Appointments shall be for a
29 term of three years beginning the first day of July of
30 the year of appointment, except for the first board
31 appointed, whose terms shall be as follows:

32 (a) The pathologists and one baccalaureate clinical
33 practitioner shall serve a one-year term;

34 (b) The nonpathologist physician or doctor of osteo-
35 pathy, and the other clinical practitioner shall serve for
36 a two-year term;

37 (c) The lay person shall serve for a three-year term.

38 Successors to those first board members will serve
39 three-year terms. Board members may succeed them-
40 selves once, but may not serve for a total period in excess
41 of six years. In the event of a vacancy on the advisory
42 board the governor shall appoint a successor in the same
43 manner as the original appointment was made. The
44 successor will serve for the unexpired term and may be
45 eligible for reappointment: *Provided*, That any member
46 shall serve until such time as his or her successor is
47 appointed.

§16-5J-6. Hearing and judicial review.

1 If a license is withheld, suspended or revoked, the
2 laboratory is entitled to a hearing before representatives
3 of the department of health within sixty days of the
4 withholding, suspension or revocation decision. Such
5 laboratory may be represented at the hearing by counsel
6 and may present evidence in its defense. The final order
7 of the director will be based on a record of the hearing
8 and shall contain findings of fact and conclusions of law.
9 The laboratory may appeal an adverse order to the
10 circuit court of Kanawha County or the circuit court of
11 the county in which the laboratory is located to
12 determine whether the director abused his discretion or
13 exceeded his jurisdiction. The department of health has
14 the power to obtain an injunction during the time
15 preceding the hearing against any laboratory which
16 fails to meet licensure requirements and whose con-
17 tinued operation poses a significant threat to the public
18 health.

§16-5J-7. Exemptions.

1 This article does not include or apply to any labora-
2 tory or laboratories maintained and operated by the
3 federal government or to any laboratory or laboratories

4 maintained and operated purely for research or teach-
5 ing purposes nor to any laboratory operated by a
6 primary health care center having tax exempt status
7 and receiving contributions which are deductible to the
8 contributor under provisions of federal law. All county
9 health departments shall be exempt from this article.

§16-5J-8. Unlawful conduct; penalties.

1 It is a misdemeanor for any person to solicit, receive,
2 accept, deliver or transmit, by mail or otherwise,
3 material originating from the human body on behalf of
4 any person operating a laboratory not in possession of
5 a license under this article regardless of whether such
6 laboratory is located in this state and, upon conviction
7 thereof, such person shall be fined not less than five
8 hundred dollars. The provisions of this section do not
9 apply to transactions with any person operating a
10 laboratory located in another state, which laboratory has
11 been issued a license or permit in conformity with the
12 "Clinical Laboratories Improvement Act of 1967," and
13 related statutes. Neither does this section apply to
14 transactions with laboratories operated in this state
15 which are exempt from the license requirements of this
16 article.

§16-5J-9. Interpretation of article; severability.

1 The provisions of this article are severable and if any
2 of its provisions shall be held unconstitutional, the
3 decision of the court shall not affect or impair any of
4 the remaining provisions of this article. It is hereby
5 declared to be the legislative intent that this article
6 would have been adopted had such unconstitutional
7 provisions not been included herein.

§16-5J-10. Licensure of technicians; fee; rules and regulations.

1 (a) The director of the department of health shall
2 promulgate rules and regulations for the licensure and
3 certification of lab technicians and lab technologists. All
4 such persons being so employed on the effective date of
5 this article shall be automatically certified and exempt
6 from this requirement: *Provided*, That any technologist

7 and technician who is certified by the American medical
8 technologists or the American society of clinical
9 pathologists or the national certification agency for
10 medical laboratory personnel or any federal certification
11 program shall be considered certified.

12 (b) All laboratory technicians or technologists shall
13 pay an annual license fee of twenty-five dollars to the
14 director of the department of health to cover the costs
15 of licensure.

16 (c) All rules and regulations required under this
17 section or other provisions of this article may not be filed
18 as emergency rules until after the set of rules is
19 approved by the Legislature.

20 (d) All fees and interest earned or collected by the
21 department under this article shall be used to pay for
22 the implementation of this article.

CHAPTER 86

(S. B. 388—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

Clerk's Note: It has been determined that S. B. 388, originally styled as Chapter 86, was incorrectly enrolled and signed by the Governor in an incorrect form.

Therefore, the Governor not having received and signed a true and correct copy of the bill as passed by both houses, S. B. 388 did not become law.

The text formerly occupied pages 733 and 734, which have been omitted.

CHAPTER 87

(Com. Sub. for S. B. 576—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed April 8, 1989: in effect from passage. Approved by the Governor.]

AN ACT to repeal section four, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty of said article; to further amend chapter

sixteen of said code by adding thereto a new article, designated article twenty-nine-d; to amend and reenact section three, article four, chapter twenty-three of said code; and to amend article twelve, chapter twenty-nine of said code by adding thereto a new section, designated section five-c, all relating to the health care cost review authority; repealing a freeze on rates; repealing certain expedited rate review processes; authorizing the creation of other expedited rate review processes; relating to rate determinations; approval of rate increases for hospitals; providing for regulations regarding reporting requirements; providing legislative findings and legislative purposes; providing definitions for certain articles; providing that pharmacies and pharmacists not be considered health care providers under certain circumstances; providing for cooperation among agencies; providing for the development of plans concerning health care by specified departments or divisions of state government; providing for reports to the Legislature; prohibitions on balance billing and exceptions and termination thereof; providing exceptions for certain health care providers; providing criteria for an acceptable preferred provider contract; providing for rates of reimbursement and exceptions thereto; exemption from and application of antitrust laws; providing civil penalties for violations of the article and provisions for removal as a provider; providing a severability clause for certain articles; authorizing promulgation of rules by certain departments; providing schedules for maximum disbursements for medical, surgical and hospital treatment for workers' compensation; providing for submission of the rate schedule to the Legislature; requiring verification for workers' compensation payments; prohibiting charges in excess of scheduled amounts; providing for employer participation in preferred provider organizations, programs or cost containment relationships; and penalties for violations of article.

Be it enacted by the Legislature of West Virginia:

That section four, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-

one, as amended, be repealed; that section twenty of said article be amended and reenacted; that said chapter sixteen be further amended by adding thereto a new article, designated article twenty-nine-d; that section three, article four, chapter twenty-three of said code be amended and reenacted; and that article twelve, chapter twenty-nine of said code be amended by adding thereto a new section, designated section five-c, all to read as follows:

Chapter

16. Public health.

23. Workers' Compensation.

29. Miscellaneous Boards and Officers.

CHAPTER 16. PUBLIC HEALTH.

Article

29B. West Virginia Health Care Cost Review Authority.

29D. State Health Care.

ARTICLE 29B. WEST VIRGINIA HEALTH CARE COST REVIEW AUTHORITY.

§16-29B-20. Rate determination.

1 (a) Upon commencement of review activities, no rates
2 may be approved by the board nor payment be made
3 for services provided by hospitals under the jurisdiction
4 of the board by any purchaser or third-party payor to
5 or on behalf of any purchaser or class of purchasers
6 unless:

7 (1) The costs of the hospital's services are reasonably
8 related to the services provided and the rates are
9 reasonably related to the costs;

10 (2) The rates are equitably established among all
11 purchasers or classes of purchasers within a hospital
12 without discrimination unless federal or state statutes or
13 regulations conflict with this requirement. Equity
14 among classes of purchasers may be achieved by
15 considering demonstrated differences in the financial
16 requirements of hospitals resulting from service,
17 coverage and payment characteristics of a class of
18 purchasers. The provision for differentials in rates
19 among classes of purchasers should be carried out in the
20 context of each hospital's total financial requirements

21 for the efficient provision of necessary services. The
22 board shall institute a study of objective methods of
23 computing the percentage differential to be utilized for
24 all hospitals in determining appropriate projected gross
25 revenues under subsection (b) of this section. Such study
26 shall include a review and determination of the relevant
27 and justifiable economic factors which can be considered
28 in setting such differential. The differential shall be
29 allowed for only those activities and programs which
30 result in quantifiable savings to the hospital with
31 respect to patient care costs, bad debts, free care or
32 working capital, or reductions in the payments of other
33 payors. Each component utilized in determining the
34 differential shall be individually quantified so that the
35 differential shall equal the value assigned to each
36 component. The board shall consider such matters as
37 coverage to individual subscribers, the elderly and small
38 groups, payment practices, savings in hospital adminis-
39 trative costs, cost containment programs and working
40 capital. The study shall also provide for a method of
41 annual recomputation of the differential and triennial
42 recomputation of all other components. The board may
43 contract with any person or entity to assist the board
44 in the discharge of its duties as herein stated. Whoever
45 obstructs any person or entity conducting a study
46 authorized under the provisions of this section shall be
47 deemed to be in violation of this article and shall be
48 subject to any appropriate actions, including injunctive
49 relief, as may be necessary for the enforcement of this
50 section;

51 (3) The rates of payment for medicaid are reasonable
52 and adequate to meet the costs which must be incurred
53 by efficiently and economically operated hospitals
54 subject to the provisions of this article. The rates shall
55 take into account the situation of hospitals which serve
56 disproportionate numbers of low income patients and
57 assure that individuals eligible for medicaid have
58 reasonable access, taking into account geographic
59 location and reasonable travel time, to inpatient hospital
60 services of adequate quality;

61 (4) The rates are equitable in comparison to prevail-

62 ing rates for similar services in similar hospitals as
63 determined by the board;

64 (5) In no event shall a hospital's receipt of emergency
65 disaster funds from the federal government be included
66 in such hospital's gross revenues for either rate-setting
67 or assessment purposes.

68 (b) In the interest of promoting efficient and approp-
69 riate utilization of hospital services the board shall
70 review and make findings on the appropriateness of
71 projected gross revenues for a hospital as such revenues
72 relate to charges for services and anticipated incidence
73 of service. The board shall further render a decision as
74 to the amount of net revenue over expenditures that is
75 appropriate for the effective operation of the hospital.

76 (c) When applying the criteria set forth above, the
77 board shall consider all relevant factors, including, but
78 not limited to, the following: The economic factors in the
79 hospital's area; the hospital's efforts to share services;
80 the hospital's efforts to employ less costly alternatives
81 for delivering substantially similar services or produc-
82 ing substantially similar or better results in terms of the
83 health status of those served; the efficiency of the
84 hospital as to cost and delivery of health care; the
85 quality of care; occupancy level; a fair return on
86 invested capital, not otherwise compensated for;
87 whether the hospital is operated for profit or not for
88 profit; costs of education; and, income from any
89 investments and assets not associated with patient care,
90 including, but not limited to, parking garages, residen-
91 ces, office buildings, and income from foundations and
92 restricted funds whether or not so associated.

93 (d) Wages, salaries and benefits paid to or on behalf
94 of nonsupervisory employees of hospitals subject to this
95 article shall not be subject to review unless the board
96 first determines that such wages, salaries and benefits
97 may be unreasonably or uncustomarily high or low. Said
98 exemption does not apply to accounting and reporting
99 requirements contained in this article, nor to any that
100 may be established by the board. "Nonsupervisory
101 personnel," for the purposes of this section, means, but

102 is not limited to, employees of hospitals subject to the
103 provisions of this article who are paid on an hourly
104 basis.

105 (e) Reimbursement of capital and operating costs for
106 new services and capital projects subject to article two-
107 d of this chapter shall not be allowed by the board if
108 such costs were incurred subsequent to the eighth day
109 of July, one thousand nine hundred seventy-seven, unless
110 they were exempt from review or approved by the state
111 health planning and development agency prior to the
112 first day of July, one thousand nine hundred eighty-four,
113 pursuant to the provisions of article two-d of this
114 chapter.

115 (f) The board shall consult with relevant licensing
116 agencies and may require them to provide written
117 findings with regard to their statutory functions and
118 information obtained by them in the pursuit of those
119 functions. Any licensing agency empowered to suggest
120 or mandate changes in buildings or operations of
121 hospitals shall give notice to the board together with any
122 findings.

123 (g) Rates shall be set by the board in advance of the
124 year during which they apply except for the procedure
125 set forth in subsection (c), section twenty-one of this
126 article and shall not be adjusted for costs actually
127 incurred.

128 (h) All determinations, orders and decisions of the
129 board with respect to rates and revenues shall be
130 prospective in nature.

131 (i) No hospital may charge for services at rates in
132 excess of those established in accordance with the
133 requirements of and procedures set forth in this article.

134 (j) Notwithstanding any other provision of this article,
135 the board shall approve all requests for rate increases
136 by hospitals which are licensed for one hundred beds or
137 less and which are not located in a Standard Metropol-
138 itan Statistical Area where the rate of increase in the
139 hospital's gross inpatient revenues per discharge for
140 nonmedicare and nonmedicaid payors is equal to or less
141 than the rate of inflation for the hospital industry

142 nationally as measured by the most recent hospital
143 market basket component of the consumer price index
144 as reported by the United States Bureau of Labor
145 Statistics applicable to the hospital's fiscal year. The
146 board may, by regulation, impose reporting require-
147 ments to ensure that a hospital does not exceed the rate
148 of increases permitted herein.

149 (k) Notwithstanding any other provision of this
150 article, the board shall develop an expedited review
151 process applicable to all hospitals licensed for more than
152 one hundred beds or that are located in a Standard
153 Metropolitan Statistical Area for rate increase requests
154 which may be based upon a recognized inflation index
155 for the national or regional hospital industry. The board
156 shall adopt emergency regulations implementing this
157 subsection within ninety days after the effective date of
158 this subsection and shall thereafter submit a proposed
159 legislative rule to the Legislature for consideration at its
160 regular session in the year one thousand nine hundred
161 ninety.

ARTICLE 29D. STATE HEALTH CARE.

§16-29D-1. Legislative findings; legislative purpose.

§16-29D-2. Definitions.

§16-29D-3. Agencies to cooperate and to provide plan; contents of plan;
reports to Legislature; late payments by state agencies and
interest thereon.

§16-29D-4. Prohibition on balance billing; exceptions and termination of
exceptions.

§16-29D-5. Coordination of benefits.

§16-29D-6. Exemption from and application of antitrust laws.

§16-29D-7. Rules.

§16-29D-8. Civil penalties; removal as provider.

§16-29D-9. Severability; supersedes other provisions.

§16-29D-1. Legislative findings; legislative purpose.

1 (a) The Legislature hereby finds as follows:

2 (1) That a significant and ever-increasing amount of
3 the state's financial resources are required to assure that
4 the citizens of the state who are reliant on the state for
5 the provision of health care services and payment
6 thereof receive such, whether through the public
7 employees insurance agency, the state medicaid pro-

8 gram, the workers' compensation fund, the division of
9 rehabilitation services or otherwise;

10 (2) That the state has been unable to timely pay for
11 such health care services;

12 (3) That the public employees insurance agency and
13 the state medicaid program face serious financial
14 difficulties in terms of decreasing amounts of available
15 federal or state dollars by which to fund their respective
16 programs and in paying debts presently owed;

17 (4) That, in order to alleviate such situation and to
18 assure such health care services, in addition to adequate
19 funding of such programs, the state must effect cost
20 savings in the provision of such health care;

21 (5) That it is in the best interest of the state and the
22 citizens thereof that the various state departments and
23 divisions involved in such provision of health care and
24 the payment thereof cooperate in the effecting of cost
25 savings; and

26 (6) That the health and well-being of all state citizens,
27 and particularly those whose health care is provided or
28 paid for by the public employees insurance agency, the
29 state medicaid program, the workers' compensation
30 fund and the division of rehabilitation services, are of
31 primary concern to the state.

32 (b) This article is enacted to provide a framework
33 within which the departments and divisions of state
34 government can cooperate to effect cost savings for the
35 provision of health care services and the payment
36 thereof. It is the purpose of the Legislature to encourage
37 the long-term, well-planned development of fair,
38 equitable and cost-effective systems for all health care
39 providers paid or reimbursed by the public employees
40 insurance agency, the state medicaid program, the
41 workers' compensation fund or the division of rehabil-
42 itation services.

§16-29D-2. Definitions.

1 (a) "Coordination of benefits" means a provision
2 establishing an order in which two or more insurance

3 contracts, plans or programs covering the same benefi-
4 ciary pay their claims, with the effect that there is no
5 duplication of benefits.

6 (b) The term "health care" or "health care services"
7 means clinically related preventive, diagnostic, treat-
8 ment, or rehabilitative services whether provided in the
9 home, office, hospital, clinic or any other suitable place
10 either inside or outside the state of West Virginia
11 provided or prescribed by any health care provider or
12 providers. Such services include, among others, medical
13 supplies, appliances, laboratory, preventive, diagnostic,
14 therapeutic and rehabilitative services, hospital care,
15 nursing home and convalescent care, medical physi-
16 cians, osteopathic physicians, chiropractic physicians,
17 and such other surgical including inpatient oral
18 surgery, nursing, and podiatric services and supplies as
19 may be prescribed by such health care providers but not
20 other dental services.

21 (c) "Health care provider" means a person, partner-
22 ship, corporation, facility or institution licensed,
23 certified or authorized by law to provide professional
24 health care services in or outside this state to an
25 individual during this individual's medical care,
26 treatment or confinement. For the sole purpose of this
27 article, pharmacists and pharmacies shall not be
28 considered health care providers.

**§16-29D-3. Agencies to cooperate and to provide plan;
contents of plan; reports to Legislature;
late payments by state agencies and inter-
est thereon.**

1 (a) All departments and divisions of the state, includ-
2 ing, but not limited to, the division of employment
3 security, the division of health, the division of human
4 services, and the division of workers' compensation
5 within the department of health and human resources;
6 the public employees insurance agency within the
7 department of administration; the division of rehabili-
8 tation services or such other department or division as
9 shall supervise or provide rehabilitation; and the West
10 Virginia board of regents or such other department or
11 division as shall govern the state medical schools, are

12 authorized and directed to cooperate in order, among
13 other things, to ensure the quality of the health care
14 services delivered to the beneficiaries of such depart-
15 ments and divisions and to ensure the containment of
16 costs in the payment for such services.

17 (b) It is expressly recognized that no other entity may
18 interfere with the discretion and judgment given to the
19 single state agency which administers the state's
20 medicaid program. Thus, it is the intention of the
21 Legislature that nothing contained in this article shall
22 be interpreted, construed, or applied to interfere with
23 the powers and actions of the single state agency which,
24 in keeping with applicable federal law, shall administer
25 the state's medicaid program as it perceives to be in the
26 best interest of that program and its beneficiaries.

27 (c) Such departments and divisions shall develop a
28 plan or plans to ensure that a reasonable and appropri-
29 ate level of health care is provided to the beneficiaries
30 of the various programs including the public employees
31 insurance agency and the workers' compensation fund,
32 the division of rehabilitation services and, to the extent
33 permissible, the state medicaid program. The plan or
34 plans may include, among other things, and the
35 departments and divisions are hereby authorized to
36 enter into:

37 (1) Utilization review and quality assurance
38 programs;

39 (2) The establishment of a schedule or schedules of the
40 maximum reasonable amounts to be paid to health care
41 providers for the delivery of health care services covered
42 by the plan or plans. Such a schedule or schedules may
43 be either prospective in nature or cost reimbursement
44 in nature, or a mixture of both: *Provided*, That any
45 payment methods or schedules for institutions which
46 provide inpatient care shall be institution-specific and
47 shall, at a minimum, take into account a disproportionate
48 share of medicaid, charity care and medical education:
49 *Provided, however*, That in no event may any rate set in
50 this article for an institutional health care provider be
51 greater than such institution's current rate established

52 and approved by the health care cost review authority
53 pursuant to article twenty-nine-b of this chapter;

54 (3) Provisions for making payments in advance of the
55 receipt of health care services by a beneficiary, or in
56 advance of the receipt of specific charges for such
57 services, or both;

58 (4) Provisions for the receipt or payment of charges
59 by electronic transfers;

60 (5) Arrangements, including contracts, with pre-
61 ferred provider organizations; and

62 (6) Arrangements, including contracts, with particu-
63 lar health care providers to deliver health care services
64 to the beneficiaries of the programs of the departments
65 and divisions at agreed upon rates in exchange for
66 controlled access to the beneficiary populations.

67 (d) The director of the public employees insurance
68 agency shall contract with an independent actuarial
69 company for a review every four years of the claims
70 experience of all governmental entities whose employees
71 participate in the public employees insurance agency
72 program, including, but not limited to, all branches of
73 state government, all state departments or agencies
74 (including those receiving funds from the federal
75 government or a federal agency), all county and
76 municipal governments, or any other similar entities for
77 the purpose of determining the cost of providing
78 coverage under the program, including administrative
79 cost, to each such governmental entity.

80 (e) Except as provided in subsection (h) of this section,
81 any health care provider who agrees to deliver health
82 care services to any beneficiary of a health care
83 program of a department or division of the state,
84 including the public employees insurance agency, the
85 state medicaid program, the workers' compensation
86 fund and the division of rehabilitation services, the
87 charges for which shall be paid by or reimbursed by any
88 department or division which participates in a plan or
89 plans as described in this section, shall be deemed to
90 have agreed to provide health care services to the

91 beneficiaries of health care programs of all of the other
92 departments and divisions participating in a plan or
93 plans: *Provided*, That a health care provider shall be in
94 compliance with this subsection if the health care
95 provider actually delivers health care services to all
96 such patients who request such services or if the health
97 care provider actually delivers health care services to at
98 least a sufficient number of patients who are beneficiar-
99 ies under the state's medicaid program to equate to at
100 least fifteen percent of the health care provider's total
101 patient population: *Provided, however*, That the delivery
102 of health care services immediately needed to resolve an
103 imminent life-threatening medical or surgical emer-
104 gency shall not be deemed to be an agreement under this
105 subsection: *Provided further*, That nothing contained in
106 this article may be deemed to, or purport to imply, any
107 consent by any physician on the staff of any hospital or
108 other health care institution to accepting or agreeing to
109 deliver health care services to any beneficiary of a
110 health care program of a division or department of this
111 state in any such physician's private office or practice
112 by virtue of the fact that such physician saw such
113 patient in connection with such physician's duties as an
114 on-call staff physician.

115 (f) The administrators of the division of health,
116 human services, workers' compensation, and the public
117 employees insurance agency shall report to the Legisla-
118 ture no later than the first day of the regular session
119 of the Legislature of the year one thousand nine hundred
120 ninety concerning the plan or plans developed: *Provided*,
121 That the plan or plans may be implemented prior to the
122 delivery of such report.

123 (g) Nothing in this section shall be construed to give
124 or reserve to the Legislature any further or greater
125 power or jurisdiction over the operations or programs
126 of the various departments and divisions affected by this
127 article than that already possessed by the Legislature in
128 the absence of this article.

129 (h) A health care provider who provides health care
130 services to any beneficiary of a health care program of
131 a department or division of the state pursuant to the

132 plan or plans developed in accordance with this article
133 may withdraw from participation in said plan or plans:
134 *Provided*, That the health care provider shall provide
135 written notice of withdrawal from participation in said
136 plan or plans to the administrator of the public
137 employees insurance agency: *Provided, however*, That a
138 provider who has withdrawn from further participation
139 is not required to render services to any beneficiaries
140 under the plan or plans who are not his or her patients
141 at the time the notice of withdrawal is provided and the
142 provider may continue to provide services to his or her
143 preexisting patients for not more than forty-five days
144 after tendering the notice of withdrawal without
145 obligating his or herself to treat such other
146 beneficiaries.

147 (i) For the purchase of health care or health care
148 services by a health care provider participating in a
149 plan under this section or in a contract under subsection
150 (d) or (e) of section four of this article on or after the
151 first day of September, one thousand nine hundred
152 eighty-nine, by the public employees insurance agency,
153 the division of rehabilitation services and the division of
154 workers' compensation, a state check shall be issued in
155 payment thereof within sixty-five days after a legitimate
156 uncontested invoice is actually received by such division
157 or agency. Any state check issued after sixty-five days
158 shall include interest at the current rate, as determined
159 by the state tax commissioner under the provisions of
160 section seventeen-a, article ten, chapter eleven of this
161 code, which interest shall be calculated from the sixty-
162 sixth day after such invoice was actually received by the
163 division or agency until the date on which the state
164 check is mailed to the vendor.

**§16-29D-4. Prohibition on balance billing; exceptions and
termination of exceptions.**

1 (a) Except in instances involving the delivery of
2 health care services immediately needed to resolve an
3 imminent life-threatening medical or surgical emer-
4 gency, the agreement by a health care provider to
5 deliver services to a beneficiary of any department or
6 division of the state which participates in a plan or plans

7 developed under section three of this article shall be
8 deemed to also include an agreement by that health care
9 provider:

10 (1) To accept the assignment by the beneficiary of any
11 rights the beneficiary may have to bill such division or
12 department for, and to receive payment under such plan
13 or plans on account of, such services; and

14 (2) To accept as payment in full for the delivery of
15 such services the amount specified in plan or plans or
16 as determined by the plan or plans. In such instances,
17 the health care provider shall bill the division or
18 department, or such other person specified in the plan
19 or plans, directly for the services. The health care
20 provider shall not bill the beneficiary or any other
21 person on behalf of the beneficiary and, except for
22 deductibles or other payments specified in the applica-
23 ble plan or plans, the beneficiary shall not be personally
24 liable for any of the charges, including any balance
25 claimed by the provider to be owed as being the
26 difference between that provider's charge or charges
27 and the amount payable by the applicable department
28 or divisions. The plan or plans may specify what sums
29 are deductibles, copayments or are otherwise payable by
30 the beneficiary and the sums for which the health care
31 provider may bill the beneficiary: In addition, any
32 health care service which is not subject to payment by
33 the plan or plans shall be the responsibility of the
34 beneficiary and for those health care services which are
35 not covered by the plans, there shall be no prohibition
36 against billing the beneficiary directly.

37 (b) The prohibitions and limitations stated in subsec-
38 tion (a) of this section do not apply to the delivery of
39 health care services immediately needed to resolve an
40 imminent life-threatening medical or surgical emer-
41 gency. However, once the patient is stabilized, then the
42 delivery of any further health care services shall be
43 subject to subsection (a) of this section for those latter
44 services only.

45 (c) The exceptions provided in this section for the
46 delivery of health care services immediately needed to

47 resolve an imminent life-threatening medical or surgical
48 emergency shall not apply to health care providers
49 under contract with a department or division plan or
50 plans.

51 (d) Subsections (a), (b) and (c) of this section shall not
52 be applicable to those health care providers who are
53 allopathic physicians, osteopathic physicians, or podia-
54 trists and who enter into acceptable preferred provider
55 contracts with the public employees insurance agency
56 insofar as this section would apply to beneficiaries of
57 that agency. The limitations in this subsection do not
58 apply to the beneficiaries of any other program of any
59 other department or division of the state or to any other
60 type of health care provider. An acceptable preferred
61 provider contract for the purpose of this subsection shall
62 be one which meets each and every one of the following
63 factors in addition to the other elements required by a
64 preferred provider arrangement:

65 (1) The contract shall set the rates of reimbursement
66 for health care services at the eightieth percentile of the
67 public employees insurance agency's 1988 calendar year
68 experience in paying claims unless, after the thirty first
69 day of December, one thousand nine hundred eighty-
70 nine, the director of the public employees insurance
71 agency determines that continuing to make payments at
72 the eightieth percentile shall not be consistent with the
73 budgetary restrictions imposed by the Legislature upon
74 the public employees insurance agency. In this later
75 event, the director, after consultation with the advisory
76 committee created under section seven of this article,
77 may cause the rate of reimbursement to be set below the
78 aforesaid eightieth percentile but in no event may those
79 rates be set below the seventy-fifth percentile. In
80 determining whether continued rates of payment of the
81 eightieth percentile shall be consistent or inconsistent
82 with the aforesaid budgetary restrictions, the director
83 shall take into consideration only the current claims
84 experience of the health care providers covered by this
85 subsection and shall not consider the effects of the other
86 demands upon the public employees insurance agency's
87 resources. If a reduction in rates is necessary during a

88 fiscal year, at the start of the following fiscal year and
89 for the first six months thereafter, the rates of reimbur-
90 sement shall revert to the aforesaid eightieth percentile;

91 (2) The contract applies to at least seventy percent, by
92 the first day of July, one thousand nine hundred eighty-
93 nine, and eighty percent by the first day of September,
94 one thousand nine hundred eighty-nine, of the members
95 of recognized specialties of these health care providers
96 in the applicable region as defined by the eleven
97 planning and development council regions authorized by
98 section five-a, article two-d, chapter sixteen of this code
99 as those regions exist on the effective date of this article:
100 *Provided*, That in determining the percentages stated
101 above in this subsection, the total number of health care
102 providers in a given region and specialty shall not
103 include those providers who are hospital based and who
104 do not themselves bill or receive a fee for services
105 delivered by them nor shall the total number include
106 those providers who decline to deliver health care
107 services to all beneficiaries of a health care program of
108 all departments or divisions of the state: *Provided*,
109 *however*, That the director of the public employees
110 insurance agency may waive this factor for any individ-
111 ual or group of health care providers if the director
112 ascertains that a sufficient number of providers or
113 recognized specialists in a given region are willing to
114 enter into or to continue with a contract to assure access
115 to that type of health care service to the local public
116 employees insurance agency beneficiaries;

117 (3) The contract provides for a utilization review and
118 quality assurance program which is satisfactory to the
119 public employees insurance agency;

120 (4) The contract provides that the beneficiaries of the
121 public employees insurance agency shall be individually
122 responsible for payments only as provided for by the
123 agency's benefit plan or plans and shall bear no personal
124 liability for payment for health care services except as
125 provided for by the plan or plans;

126 (5) The contract is entered into by the first day of
127 July, one thousand nine hundred eighty-nine;

128 (6) The contract shall include incentives to public
129 employees insurance agency beneficiaries to utilize
130 subscriber health care providers and shall also include
131 incentives to health care providers to subscribe to a
132 contract; and

133 (7) The contract shall provide that, if after the
134 contract is entered into, later developments reveal that
135 one or more of subdivisions (2), (3), (4) or (6) of this
136 subsection are no longer satisfied, then the director of
137 the public employees insurance agency, after approval
138 by the governor, may renegotiate or terminate the
139 contract upon giving notice of no less than thirty days
140 nor more than forty-five days: *Provided*, That any
141 nonparticipating providers during the continuance of
142 this section shall be permitted to set his or her rates for
143 reimbursement at no greater than one hundred and ten
144 percent of the rates of reimbursement set by the director
145 at the aforesaid eightieth percentile and may make
146 claim against the beneficiary for the balance between
147 the amount paid by the public employees insurance
148 agency and the rate set by the provider as described
149 above: *Provided, however*, That any nonparticipating
150 provider shall be subject to the provisions of subsections
151 (a), (b) and (c) of this section if the director of the public
152 employees insurance agency determines in any case that
153 a beneficiary of the public employees insurance agency
154 does not have access to a provider who is participating
155 in a preferred provider contract.

156 (e) This section shall not be applicable to hospitals
157 which enter into prospective contracts with the public
158 employees insurance agency for each state fiscal year
159 insofar as this section would apply to beneficiaries of
160 that agency. The limitations in this subsection do not
161 apply to the beneficiaries of any other program of any
162 other department or division of the state or to any other
163 type of health care provider. Such contracts shall
164 include, in addition to the other elements required by
165 such a contract, the following factors:

166 (1) The contract provides for a utilization review and
167 quality assurance program which is satisfactory to the
168 public employees insurance agency;

169 (2) For the first year of the contract, the rates for
170 health care services are determined prospectively based
171 upon the public employees insurance agency's one
172 thousand nine hundred eighty-nine fiscal year expe-
173 rience in paying the charges of each individual hospital,
174 but taking into consideration also any adjustments to
175 that experience that may be necessary to provide for the
176 special concerns and needs of the state's small and rural
177 hospitals; for each succeeding year of the contract, the
178 rates shall be set at no less than that of the first year
179 but may be negotiated for a greater level;

180 (3) The contract provides that the beneficiaries of the
181 public employees insurance agency shall be individually
182 responsible for payments only as provided for by the
183 agency's benefit plan or plans and shall bear no personal
184 liability for payment for health care services except as
185 provided for by the plan or plans;

186 (4) The contract is entered into by the first day of
187 July, one thousand nine hundred eighty-nine, unless the
188 director of the public employees insurance agency
189 extends this time limit for good cause;

190 (5) The contract shall provide by its terms that, if
191 after the contract is entered into, later developments
192 reveal that any one or more of the first four factors set
193 forth in this subsection are no longer satisfied, then the
194 director of the public employees insurance agency, after
195 approval of the governor, may renegotiate or terminate
196 that contract upon reasonable notice which shall not be
197 less than thirty days nor more than forty-five days:
198 *Provided*, That any hospital which elects not to enter
199 into a contract shall be subject to the provisions of
200 subsections (a), (b) and (c) of this section.

201 (f) This section shall terminate without any further
202 action by the Legislature on the thirtieth day of June,
203 one thousand nine hundred ninety-one. On or before the
204 first day of January, one thousand nine hundred ninety-
205 one, the advisory committee created under section seven
206 of this article and the director of the public employees
207 insurance agency shall report to the governor and the
208 Legislature upon the impact of the effects of the

209 prohibition upon balance billing in this section upon the
210 health care provider community, upon the public
211 employees, and upon the public employees insurance
212 agency.

§16-29D-5. Coordination of benefits.

1 Coordination of benefits is permitted between two or
2 more insurance contracts or employee benefit plans and
3 shall be included for benefits from the public employees
4 insurance agency and, as appropriate, from the state
5 medicaid program, the workers' compensation fund and
6 the division of rehabilitation services. Notwithstanding
7 the foregoing, the workers' compensation fund shall be
8 considered the primary payor for health care services
9 related to work-related injuries and diseases ruled
10 compensable as provided in article four, chapter twenty-
11 three of this code. In no event shall the state medicaid
12 program be considered a primary insurance contract.

§16-29D-6. Exemption from and application of antitrust laws.

1 (a) Actions of the departments and divisions of the
2 state, or by officers, administrators, employees, or other
3 agents thereof, shall be exempt from antitrust action as
4 provided in section five, article eighteen, chapter forty-
5 seven of this code. Any actions of health care providers
6 when made in compliance with orders, directives, rules,
7 or regulations issued or promulgated by a department
8 or division which participates in a plan or plans
9 developed under section three of this article shall
10 likewise be exempt.

11 (b) It is the express intention of the Legislature that
12 the actions specified in subsection (a) of this section by
13 either state-related persons or entities or by health care
14 providers should also be deemed to be state actions for
15 purposes of obtaining exemptions from federal antitrust
16 laws.

17 (c) Notwithstanding subsections (a) and (b) of this
18 section, any agreement by two or more persons, partner-
19 ships, corporations, facilities or institutions licensed,
20 certified or authorized by law to provide professional

21 health care services in this state to an individual during
22 this individual's medical care, treatment or confine-
23 ment, unless any of the foregoing are practicing as a
24 partnership or are otherwise associated as a joint
25 venture, to refrain from delivering health care services
26 to any person or persons, which delivery would be
27 subject to the provisions of this article, for the purpose
28 or with the effect of fixing, controlling, or maintaining
29 their charges for the delivery of health care services or
30 for the purpose or with the effect of defeating the
31 purposes of this article shall be deemed to be unlawful
32 under the provision of subsection (a), section three,
33 article eighteen, chapter forty-seven of this code and
34 shall be subject to the remedies and relief provided for
35 in that article and chapter: *Provided*, That nothing
36 contained in this subsection may prevent any physician
37 on staff of any hospital or other health care institution
38 from discussing with such hospital or health care
39 institution the fact that such physician only consents to
40 see the patient in connection with his or her duties as
41 a staff on-call physician.

§16-29D-7. Rules.

1 The secretary of the department of health and human
2 resources shall promulgate rules to carry out the
3 provisions of this article. The governor shall establish an
4 advisory committee consisting of at least five individuals
5 representing: An administrator of a small rural hospi-
6 tal; an administrator of a hospital having a dispropor-
7 tionate share of medicaid or charity care; a registered
8 professional nurse; a physician licensed in this state; and
9 beneficiaries of the plan or plans. The majority of this
10 advisory committee shall consist of health care provid-
11 ers. The purpose of the advisory committee is to advise
12 and assist in the establishment of reasonable payment
13 methods, schedule or schedules and rates. The advisory
14 committee shall serve without compensation; however,
15 the members thereof are entitled to reimbursement of
16 their expenses. The policies and procedures of the rate
17 schedule process setting forth the methodology for
18 determination of rates, payments and schedules are
19 subject to the legislative rule-making procedures of

20 chapter twenty-nine-a of this code: *Provided*, That
21 emergency rules may be utilized: *Provided, however*,
22 That the actual rates, payments and schedules them-
23 selves shall not be subject to chapter twenty-nine-a of
24 this code.

§16-29D-8. Civil penalties; removal as provider.

1 The secretary of the department of health and human
2 resources may assess a civil penalty for violation of this
3 article. In addition to the assessments the secretary may
4 remove the health care provider from any list of
5 providers for whose services a department or division
6 may pay. Upon the secretary determining there is
7 probable cause to believe that a health care provider is
8 knowingly violating any portion of this article, or any
9 plan, order, directive, rule or regulation issued pursuant
10 to this article, the secretary shall provide such health
11 care provider with written notice which shall state the
12 nature of the alleged violation and the time and place
13 at which such health care provider shall appear to show
14 cause why a civil penalty or removal from any list of
15 providers should not be imposed, at which time and
16 place such health care provider shall be afforded an
17 opportunity to cross-examine the secretary's witnesses
18 and afforded the opportunity to present testimony and
19 enter evidence in support of its position. The hearing
20 shall be conducted in accordance with the administra-
21 tive hearings provisions of section four, article five,
22 chapter twenty-nine-a of this code. The hearing may be
23 conducted by the secretary or a hearing officer ap-
24 pointed by the secretary. The secretary or hearing
25 officer shall have the power to subpoena witnesses,
26 papers, records, documents, and other data in connec-
27 tion with the alleged violations and to administer oaths
28 or affirmations in any such hearing. If, after reviewing
29 the record of such hearing, the secretary determines
30 that such health care provider is in violation of this
31 article or any plan, order, directive, rule, or regulation
32 issued pursuant to this article, the secretary may assess
33 a civil penalty of not less than one thousand dollars nor
34 more than twenty-five thousand dollars, and may
35 remove the health care provider. Any health care

36 provider assessed or removed shall be notified of the
37 assessment or removal in writing and the notice shall
38 specify the reasons for the assessment and its amount
39 or the reasons for removal. In any appeal by the health
40 care provider in the circuit court, the scope of the court's
41 review, which shall include a review of the amount of
42 the assessment and any removal as a provider, shall be
43 as provided in section four, article five, chapter twenty-
44 nine-a of this code for the judicial review of contested
45 administrative cases. The provider may be removed
46 from any list of providers, based upon the final orders
47 of the secretary, pending final disposition of any appeal.
48 Such removal order or penalty assessment may be
49 stayed by the circuit court after hearing, but may not
50 be stayed in any ex parte proceeding. If the health care
51 provider assessed or removed has not appealed such
52 assessments or removal and fails to pay the amount of
53 the assessment to the secretary within thirty days, the
54 attorney general may institute a civil action in the
55 circuit court of Kanawha County to recover the amount
56 of the assessment. Civil action under this section shall
57 be handled in an expedited manner by the circuit court
58 and shall be assigned for hearing at the earliest possible
59 date. The remedies set forth in this section are intended
60 only for violations of this article and shall not affect any
61 other contractual relationship between any department
62 or division and a health care provider.

§16-29D-9. Severability; supersedes other provisions.

1 If, for any reason, any part of this article or the
2 application thereof to any person or circumstances is
3 held unconstitutional or invalid, such unconstitutionality
4 or invalidity shall not affect the remaining parts or their
5 application to any other person or circumstance, and to
6 this end, each and every part of this article is hereby
7 declared to be severable. In the event of any inconsis-
8 tency between the provisions of this article and any
9 other provisions of this code, the provisions of this article
10 shall prevail.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; charges in excess of scheduled amounts not to be made; contract by employer with hospital, physician, etc., prohibited; penalties for violation.

1 The commissioner shall establish and alter from time
2 to time as he may determine to be appropriate a
3 schedule of the maximum reasonable amounts to be paid
4 to chiropractic physicians, medical physicians, osteopa-
5 thic physicians, podiatrists, optometrists, vocational
6 rehabilitation specialists, pharmacists, ophthalmolo-
7 gists, and others practicing medicine and surgery,
8 surgeons, hospitals or other persons, firms or corpora-
9 tions for the rendering of treatment to injured em-
10 ployees under this chapter. The commissioner also, on
11 the first day of each regular session, and also from time
12 to time, as the commissioner may consider appropriate,
13 shall submit the schedule, with any changes thereto, to
14 the Legislature. The promulgation of the schedule is not
15 subject to the legislative rule-making review procedures
16 established in sections eleven through fifteen, article
17 three, chapter twenty-nine-a of this code.

18 The commissioner shall disburse and pay from the
19 fund for such personal injuries to such employees as may
20 be entitled thereto hereunder as follows:

21 (a) Such sums for medicines, medical, surgical, dental
22 and hospital treatment, crutches, artificial limbs and
23 such other and additional approved mechanical applian-
24 ces and devices as may be reasonably required.

25 (b) Payment for such medicine, medical, surgical,
26 dental and hospital treatment, crutches, artificial limbs
27 and such other and additional approved mechanical
28 appliances and devices authorized under subdivision
29 (a) hereof may be made to the injured employee, or to
30 the person, firm or corporation who or which has
31 rendered such treatment or furnished any of the items
32 specified above, or who has advanced payment for same,
33 as the commissioner may deem proper, but no such
34 payments or disbursements shall be made or awarded

35 by him unless duly verified statements on forms
36 prescribed by the commissioner shall be filed with the
37 commissioner within two years after the cessation of
38 such treatment or the delivery of such appliances:
39 *Provided*, That no payment hereunder shall be made
40 unless such verified statement shows no charge for or
41 with respect to such treatment or for or with respect to
42 any of the items specified above has been or will be
43 made against the injured employee or any other person,
44 firm or corporation, and when an employee covered
45 under the provisions of this chapter is injured in the
46 course of and as a result of his employment and is
47 accepted for medical, surgical, dental or hospital
48 treatment, the person, firm or corporation rendering
49 such treatment is hereby prohibited from making any
50 charge or charges therefor or with respect thereto
51 against the injured employee or any other person, firm
52 or corporation which would result in a total charge for
53 the treatment rendered in excess of the maximum
54 amount set forth therefor in the commissioner's schedule
55 established as aforesaid.

56 (c) No employer shall enter into any contracts with
57 any hospital, its physicians, officers, agents or employees
58 to render medical, dental or hospital service or to give
59 medical or surgical attention therein to any employee
60 for injury compensable within the purview of this
61 chapter, and no employer shall permit or require any
62 employee to contribute, directly or indirectly, to any
63 fund for the payment of such medical, surgical, dental
64 or hospital service within such hospital for such
65 compensable injury. Any employer violating this section
66 shall be liable in damages to his employees as provided
67 in section eight, article two of this chapter, and any
68 employer or hospital or agent or employee thereof
69 violating the provisions of this section shall be guilty of
70 a misdemeanor, and, upon conviction thereof, shall be
71 punished by a fine not less than one hundred dollars nor
72 more than one thousand dollars or by imprisonment not
73 exceeding one year, or both: *Provided*, That the forego-
74 ing provisions of this subdivision (c) shall not be deemed
75 to prohibit an employer from participating in a pre-
76 ferred provider organization or program or a health

77 maintenance organization or other medical cost contain-
78 ment relationship with the providers of medical,
79 hospital or other health care: *Provided, however,* That
80 nothing in this section shall be deemed to restrict the
81 right of a claimant to select a health care provider for
82 treatment of a compensable injury or disease.

83 (d) When an injury has been reported to the commis-
84 sioner by the employer without protest, the commis-
85 sioner may pay, or order an employer who or which
86 made the election and who or which received the
87 permission mentioned in section nine, article two of this
88 chapter to pay, within the maximum amount provided
89 by schedule established by the commissioner as afore-
90 said, bills for medical or hospital services without
91 requiring the injured employee to file an application for
92 benefits.

93 (e) The commissioner shall provide for the replace-
94 ment of artificial limbs, crutches, hearing aids, eye-
95 glasses and all other mechanical appliances provided in
96 accordance with this section which later wear out, or
97 which later need to be refitted because of the progres-
98 sion of the injury which caused the same to be originally
99 furnished, or which are broken in the course of and as
100 a result of the employee's employment. The fund or self-
101 insured employer shall pay for these devices, when
102 needed, notwithstanding any time limits provided by
103 law.

104 Notwithstanding the foregoing, the commissioner may
105 establish fee schedules, make payments and take other
106 actions required or allowed pursuant to article twenty-
107 nine-d, chapter sixteen of this code.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 12. STATE INSURANCE.

§29-12-5c. Insurance for damages allegedly resulting from obstetric treatment of medicaid patients.

1 In accordance with the provisions of this article, the
2 state board of risk and insurance management shall provide

3 appropriate professional or other liability insurance for
4 all medical practitioners who provide obstetric treat-
5 ment to patients which is reimbursed or reimbursable
6 by state medicaid funds. Said insurance shall cover any
7 claim, demand, action, suit or judgment by reason of
8 alleged negligence or other act in the course of provid-
9 ing such obstetric treatment which results in illness,
10 injury or other compensable damages, if, at the time of
11 the alleged negligence or other act, the practitioner
12 knew or believed that the services which he or she was
13 providing were reimbursable or would be reimbursed
14 by state medicaid funds. Such insurance coverage shall
15 be in an amount to be determined by the state board
16 of risk and insurance management, but in no event less
17 than one million dollars for each occurrence.

18 The insurance policy shall include a provision for the
19 payment of the cost of attorney's fees in connection with
20 any claim, demand, action, suit or judgment arising
21 from such alleged negligence or other act resulting in
22 illness, injury or other compensable damages under the
23 conditions specified in this section.

24 The insurance coverage specified in this section shall
25 not apply to any hospital which is the site of the obstetric
26 treatment or to any employee of said hospital, except
27 that a practitioner providing the obstetric treatment
28 who is also an employee of the hospital which is the site
29 of the treatment shall be included in the insurance
30 coverage required by this section.

CHAPTER 88

(Com. Sub. for H. B. 2636—By Mr. Speaker, Mr. Chambers, and Delegate White)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight and nine, article sixteen-a, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto two new sections, designated

sections ten and eleven, all relating to creating the West Virginia health care insurance plan; legislative findings; purpose; planning; development and implementation; West Virginia health care insurance fund; administrative support; rules and regulations; contents; legislative report; availability of data of department of employment security; termination of health care insurance plan; exemption from state antitrust laws and insurance laws; misrepresentation by employee or provider; penalty; and exception.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, seven, eight and nine, article sixteen-a, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections ten and eleven, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 16A. THE WEST VIRGINIA HEALTH CARE INSURANCE ACT.

- §5-16A-1. Short title.
- §5-16A-2. Legislative findings.
- §5-16A-3. Insurance plan; purpose; planning; development and implementation.
- §5-16A-4. West Virginia health care insurance fund; administrative support.
- §5-16A-5. Rules; contents.
- §5-16A-6. Legislative report.
- §5-16A-7. Availability of data of department of employment security.
- §5-16A-8. Exemption from state antitrust laws and insurance laws.
- §5-16A-9. Termination of health care insurance plan.
- §5-16A-10. Misrepresentation by employee or provider; penalty.
- §5-16A-11. Exceptions.

§5-16A-1. Short title.

- 1 This article may be cited as "The West Virginia
- 2 Health Care Insurance Plan Act."

§5-16A-2. Legislative findings.

1 The Legislature hereby finds and declares as follows:

2 (a) That in excess of three hundred thousand, or
3 nearly sixteen percent, of West Virginians are without
4 health insurance and are not covered by federal or state
5 health care assistance and eighty percent of these
6 persons have incomes below two hundred percent of the
7 federal poverty level and are thus medically indigent;

8 (b) That this problem is exacerbating as the number
9 of persons so uninsured has increased by thirty thou-
10 sand, or eleven percent, since the year one thousand nine
11 hundred eighty;

12 (c) Approximately seventy-six thousand of these
13 uninsured are employed by small businesses. Taking
14 into account dependents, this group accounts for
15 approximately one half of West Virginia's uninsured
16 population;

17 (d) No relief appears available for the uninsured
18 working citizens of this state in the form of adequate
19 health insurance or access to funds to pay therefor and
20 the health and welfare of these uninsured working
21 citizens and their dependents is increasingly threatened;

22 (e) Studies show that the numbers of such uninsured
23 persons are rising as a result of changing patterns of
24 employment in which jobs are available in ever enlarg-
25 ing numbers in industries involving service and trade
26 and that these are among the least likely industries to
27 provide health insurance for employees;

28 (f) The system of cost shifting by providers of
29 uncompensated health care to paying health care
30 consumers creates increasing numbers of persons
31 unable to afford health insurance and has resulted in a
32 climate where the financial stability of health care
33 providers is increasingly threatened; West Virginia
34 taxpayers and private insurance companies provided
35 one hundred thirty million dollars of uncompensated
36 health care in the year one thousand nine hundred
37 eighty-seven, which represents eight and three tenths
38 percent of gross patient revenue, a rate that is twenty-
39 five percent greater than the national average;

40 (g) Thousands of uninsured working citizens are
41 employed in small businesses many of which do not have
42 available to them affordable group health insurance
43 plans for their employees;

44 (h) Many small businesses, with only one employee
45 who is considered to be a high risk for medical reasons,
46 are unable to obtain group health insurance for any of
47 their employees;

48 (i) That the Family Support Act of 1988 provides the
49 state of West Virginia with an opportunity to provide
50 basic health care coverage to families earning below one
51 hundred and eighty-five percent of the federal poverty
52 level; thereby taking full advantage of available federal
53 funds;

54 (j) That families and individuals without health
55 insurance delay seeking health care which often results
56 in more expensive intensive care at a later date;

57 (k) That the state of West Virginia presently does not
58 have a "high risk pool" which would provide health
59 insurance to persons not able to purchase health
60 insurance due to medical reasons;

61 (l) The severity of these problems demands a solution,
62 and projects have been developed in other states which
63 do provide affordable, necessary health insurance
64 coverage through the combining of small employee
65 groups into a larger insurance pool;

66 (m) To address these problems, the public employees
67 insurance agency created by article sixteen of this
68 chapter is the appropriate logical entity to implement
69 a health care insurance plan to target West Virginians
70 and their dependents without health insurance, and to
71 assist those unable to purchase health insurance with
72 the cooperation and assistance of the legislative task
73 force on uncompensated health care and medicaid
74 expenditures created by article twenty-nine-c, chapter
75 sixteen of this code.

**§5-16A-3. Insurance plan; purpose; planning; develop-
ment and implementation.**

1 On the first day of July, one thousand nine hundred
2 eighty-nine, a health care insurance plan in the state
3 shall be commenced and administered by the public
4 employees insurance agency and the resources available
5 to it solely through the West Virginia health care
6 insurance fund, with the advice and assistance of the
7 legislative task force on uncompensated health care and
8 medicaid expenditures. The purpose of the plan shall be
9 to make available affordable health insurance by
10 pooling in a group for health insurance purposes groups
11 of small businesses to provide for acute and primary
12 health care services to working citizens of the state and
13 their dependents who are without health insurance
14 benefits offered in connection with their employment as
15 well as to any citizen who is unable to obtain health
16 insurance coverage. The public employees insurance
17 agency shall be responsible for the development and
18 implementation of the plan. In so doing, the agency may
19 seek the advice and assistance of the legislative task
20 force on uncompensated health care and medicaid
21 expenditures.

**§5-16A-4. West Virginia health care insurance fund;
administrative support.**

1 (a) There is hereby created in the state treasury the
2 West Virginia health care insurance fund. The fund
3 shall operate as a revolving fund whereby all appropri-
4 ations, other payments and interest earned thereon shall
5 be applied and reapplied for the purposes of this article.
6 Any premiums, grants, gifts, legislative appropriations
7 or other income from any source shall be deposited into
8 this fund.

9 (b) The fund shall be used to provide the subsidization
10 provided in subsections (e) and (g), section five of this
11 article as well as to pay the administrative costs and all
12 other proper costs incurred in implementing the
13 provisions of this article.

14 (c) The public employees insurance agency is autho-
15 rized to utilize its administrative staff and resources in
16 administering this article. In no event, however, may
17 any benefit or program entitlement offered to those

18 eligible under the provisions of article sixteen be
19 affected by the plan established in this article.

§5-16A-5. Rules; contents.

1 (a) The public employees insurance agency shall
2 develop and implement the plan through rules promul-
3 gated in accordance with the provisions of chapter
4 twenty-nine-a of this code. The legislative task force on
5 uncompensated health care and medicaid expenditures
6 shall share with the public employees insurance agency
7 any and all pertinent data, studies, reports, analyses,
8 research, summaries, information collected, filed or
9 developed now or in the future in order to effect the
10 development and implementation of the plan contem-
11 plated herein. Upon request, in the planning, develop-
12 ment and implementation of the plan the insurance
13 commissioner and the commissioner of human services
14 shall cooperate with advice and assistance.

15 (b) The rules shall provide for the establishment of an
16 insurance pool for the provision of basic acute and
17 primary health care insurance coverage with measur-
18 able cost containment provisions to employers and
19 employees of small businesses and individuals in this
20 state and their respective dependents; shall develop a
21 definition for "small business" which definition shall
22 include nonprofit organizations and nonprofit corpora-
23 tions having nineteen or fewer employees; shall permit
24 bids from qualified and licensed insurance companies or
25 carriers, who may wish to offer plans or reinsurance for
26 the insurance coverage desired; shall address incentives
27 for small business participation in the plan, and a
28 variety of effective cost controls; shall provide for an
29 appropriate application form for participation and
30 procedures for application; shall ensure accurate and
31 appropriate marketing of the health insurance coverage
32 to small businesses throughout the state; and shall
33 establish criteria for monitoring the effectiveness of the
34 insurance pool.

35 (c) The rules shall provide that the plan will be
36 available to small business employers with nineteen
37 employees or less and to individuals who can demon-

38 strate that they have been without health insurance
39 coverage for a period of at least six months prior to
40 enrollment, except that persons who are not eligible for
41 the COBRA provisions for the unemployed and who can
42 demonstrate that their lack of health insurance is due
43 to a reduction in workforce will be eligible. Beginning
44 on the first day of April, one thousand nine hundred
45 ninety, families that no longer qualify for AFDC but do
46 qualify for Medicaid under the Family Support Act of
47 1988 will be eligible to participate in the program, and
48 the plan may include a premium for those families.

49 (d) The rules shall provide that health care provided
50 pursuant to the plan be through an exclusive provider
51 organization consisting of acute care hospitals, primary
52 care centers, clinics, physician groups and physicians.
53 Inpatient care shall be provided by hospitals at a
54 discounted rate which will be at or below cost. Primary
55 care and outpatient services shall be provided on a per
56 capita basis to be negotiated with providers or provider
57 groups and such payment may be made in advance of
58 services rendered. A formulary prescription drug
59 program shall also be included on a near cost basis.
60 Health care provided outside the exclusive provider
61 organization will generally not be covered by the plan.
62 Outpatient services shall include a quality assurance
63 component to ensure that the level of care is adequate
64 and appropriate. Appropriate provisions may be in-
65 cluded to ensure that health care providers participat-
66 ing in the plan do not realize a financial windfall from
67 such participation and that subsequent charges reflect
68 the income received therefrom.

69 (e) The rules shall provide that benefit design and
70 premium structures be developed with recommenda-
71 tions from the legislative task force on uncompensated
72 health care and medicaid expenditures. The plan shall
73 provide for differing premium and benefit structures
74 based upon the enrollee's level of income. To the extent
75 feasible, the plan will limit enrollment to those individ-
76 uals who have incomes at or below two hundred percent
77 of the federal poverty level. Premium structures may
78 include cost sharing methods including employer and

79 employee sharing of cost and a sliding scale based on
80 ability to pay. Provisions shall be included for a
81 minimum two hundred fifty dollar annual deductible for
82 inpatient acute care and a lifetime cap of two hundred
83 fifty thousand dollars, per individual, for all benefits
84 provided under the plan. The plan may provide for the
85 subsidization of premiums for employees and individu-
86 als whose income is below the federal poverty rate but
87 above medicaid payment standards. The plan may
88 include such provisions as are necessary to allow full
89 advantage to be taken of the provisions of the Family
90 Support Act of 1988.

91 (f) The plan shall begin with a three-year pilot
92 program which shall include, at a minimum, two
93 thousand subscribers. The program will be established
94 in two pilot areas in the state. One pilot area will be
95 located in an urban area defined as a metropolitan
96 statistical area and one in a rural area, defined as a
97 nonmetropolitan statistical area. The plan authorized
98 pursuant to this section is a pilot plan only, and may be
99 discontinued or terminated at the end thereof without
100 further liability on behalf of the State of West Virginia
101 or any small businesses that are participating.

102 (g) The rules may provide that medical underwriting
103 will take place after, rather than prior, to enrollment
104 in the plan, although all participants will be required
105 to complete a medical screen. Those who do not pass the
106 medical screen may be able to participate. Premiums
107 for such individuals may be at a rate higher than those
108 established for other participants. The cost of the high
109 risk participants' health care insurance premiums may
110 be partially subsidized by the health care insurance
111 fund. The rules shall provide for a schedule of the
112 subsidization, which shall be based on need, cost and
113 funds available.

114 (h) The rules shall contain provisions that limit any
115 assistance provided pursuant to the plan to that which
116 can be provided within the funds available.

§5-16A-6. Legislative report.

1 The public employees insurance agency, with the

2 advice and assistance of the legislative task force on
3 uncompensated health care and medicaid expenditures,
4 shall cooperate to prepare and submit reports to the
5 Legislature before it convenes in the years, one thousand
6 nine hundred ninety, one thousand nine hundred ninety-
7 one and one thousand nine hundred ninety-two, with
8 studies, findings, conclusions and recommendations,
9 including any recommendations for legislation, all
10 relating to the purpose and effect of the health care
11 insurance plan created herein. Said report shall be in
12 addition to any report prepared by the legislative task
13 force on uncompensated health care and medicaid
14 expenditures pursuant to the provisions of article
15 twenty-nine-c, chapter sixteen of this code.

§5-16A-7. Availability of data of department of employment security.

1 In furtherance of the purposes of this article, the
2 department of employment security shall, notwithstanding
3 the provisions of section eleven, article ten, chapter
4 twenty-one-a of this code, cooperate to make available
5 to the public employees insurance agency and the
6 legislative task force on uncompensated health care and
7 medicaid expenditures such information as they may
8 request for purposes consistent with this article to
9 identify and facilitate contact with small business
10 employers who may be eligible for participation in the
11 plan. The provisions of this section shall be liberally
12 construed by the department of employment security in
13 order to effectuate the development of the health care
14 insurance plan.

15 Information thus obtained by the public employees
16 insurance agency and the legislative task force on
17 uncompensated health care and medicaid expenditures
18 shall be maintained as strictly confidential and shall be
19 exempt from disclosure to the public.

§5-16A-8. Exemption from state antitrust laws and insurance laws.

1 The health care insurance plan and those responsible
2 for developing and implementing it under the provisions
3 of this article are exempted from the provisions of

4 section five, article eighteen, chapter forty-seven of this
5 code and any otherwise applicable provisions of chapter
6 thirty-three of this code.

§5-16A-9. Termination of health care insurance plan.

1 The health care insurance plan shall be terminated
2 pursuant to the provisions of article ten, chapter four of
3 this code on the first day of July, one thousand nine
4 hundred ninety-two, unless continued or reestablished
5 pursuant to the provisions of that article.

**§5-16A-10. Misrepresentation by employee or provider;
penalty.**

1 Any person who knowingly secures or attempts to
2 secure benefits payable under this article to which the
3 person is not entitled, or willfully misrepresents any
4 material fact relating to any other information re-
5 quested by the public employees insurance agency or
6 who willfully overcharges for services provided, or who
7 willfully misrepresents the diagnosis or nature of the
8 service provided, may be found to be overpaid and shall
9 be civilly liable for any overpayment. In addition to the
10 civil remedy provided herein, the public employees
11 insurance agency shall withhold payment of any benefits
12 due to that person until any overpayment has been
13 recovered or may directly set off, after holding internal
14 administrative proceedings to assure due process, any
15 such overcharges or improperly derived payment
16 against benefits due such person hereunder. Nothing in
17 this section shall be construed to limit any other remedy
18 or civil or criminal penalty provided by law.

§5-16A-11. Exceptions.

1 Even though a state agency or various state agencies
2 may implement this insurance program, the employers
3 and individuals provided insurance coverage by this
4 article are not entitled to access to health care providers
5 as presently mandated in article twenty-nine-d, chapter
6 sixteen of this code.

7 Health care providers may be given the right to treat
8 individuals under this plan but shall not be required to
9 provide health care service to any firm or individual
10 under the insurance plan provided in this article.

CHAPTER 89

(Com. Sub. for H. B. 2144—By Delegates Spencer and Mezzatesta)

[Passed April 7, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen, relating to creation of a commission for the hearing-impaired, statement of legislative findings, definitions, membership requirements for the commission, terms of office for commission members, goals of the commission, provisions for seminars and training sessions in deaf education, requirement for assistance from other state agencies, duties of the executive director, and provision for payment of expenses of certain members.

Be it enacted by the Legislature of West Virginia:

That chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article fourteen, to read as follows:

ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE HEARING-IMPAIRED.

- §5-14-1. Legislative findings.
- §5-14-2. Definitions.
- §5-14-3. Establishment of commission; membership.
- §5-14-4. Terms of office; quorum.
- §5-14-5. Powers and duties of the commission; register of hearing-impaired; duty to report to the commission; census; information clearing-house; coordination of interpreters; outreach programs; seminars and training sessions.
- §5-14-6. Seminars and training sessions.
- §5-14-7. Assistance of other agencies.
- §5-14-8. Executive director; staff.
- §5-14-9. Reports and recommendations.
- §5-14-10. Grants and gifts; contracts.
- §5-14-11. Reimbursement for expenses.

§5-14-1. Legislative findings.

- 1 The Legislature hereby finds and declares that:

2 (a) There is a need for West Virginia to adequately
3 identify the hearing-impaired population and provide
4 efficient and effective services to such population;

5 (b) Hearing-impaired people need to be more involved
6 in the decisions and programs that affect their lives by
7 soliciting and seriously considering their collective
8 opinion on appropriate matters;

9 (c) Cooperation among state and local agencies must
10 be facilitated in an effort to ensure that adequate and
11 appropriate services are available and provided;

12 (d) In order to further the aforementioned goals it is
13 necessary to determine what services exist and what
14 services can be developed in order to match services to
15 individual needs;

16 (e) A rubella epidemic from one thousand nine
17 hundred sixty-three to one thousand nine hundred sixty-
18 five caused a number of infants in West Virginia to be
19 born hearing-impaired. These individuals are approach-
20 ing the ages where they will no longer be eligible for
21 educational services, thus requiring services as young
22 adults. The Legislature, therefore, declares that there is
23 an unprecedented and imperative need to plan and
24 prepare for the multiplicity of services required in order
25 to ensure a life-long continuum of services to this
26 particular population;

27 (f) There must be more emphasis on the use of
28 interpreters for deaf and hard-of-hearing people and on
29 the quality control of such services;

30 (g) There must be more emphasis on the use of
31 telecommunication devices for the deaf (tdds) and means
32 to provide them for hearing-impaired people;

33 (h) Through the implementation of the provisions of
34 this article, the deaf and hard-of-hearing population of
35 West Virginia will be aided in their efforts to live
36 independent and productive lives.

§5-14-2. Definitions.

1 As used in this article:

2 “Deaf” means severe to profound impairment of the
3 sense of hearing whereby the understanding of speech
4 is unattainable through the ear alone with or without
5 amplification, and visual communication is used as the
6 primary mode of communication.

7 “Hard-of-hearing” means significant impairment to
8 the sense of hearing, but not to the extent that the
9 person must rely primarily on visual communication.

10 “Hearing-impaired” means persons who are either
11 deaf or hard-of-hearing.

§5-14-3. Establishment of commission; membership.

1 There is hereby established within the executive
2 department a commission to be known as the “West
3 Virginia Commission for the Hearing-Impaired” consist-
4 ing of fifteen persons, eight of whom shall serve ex
5 officio, to be appointed by the governor within sixty days
6 after the effective date of this article by and with the
7 advice and consent of the Senate. The commission shall
8 meet no less than four times annually. All meetings and
9 activities held by the commission shall be attended by
10 at least two qualified interpreters who shall be hired at
11 the commission’s expense or provided free of charge by
12 agencies, organizations or individuals willing to volun-
13 teer qualified interpreters. The members are:

14 (a) The commissioner, or his or her designee, of the
15 department of human services; the commissioner, or his
16 or her designee, of the department of labor; the director,
17 or his or her designee, of the department of health; the
18 state superintendent of schools, or his or her designee,
19 of the state board of education; the director, or his or
20 designee, of the division of rehabilitation; the director,
21 or his or her designee, of the division of handicapped
22 children’s services in the department of human services;
23 the chairman, or his or her designee, of the advisory
24 council for the education of exceptional children; and the
25 superintendent, or his or her designee, of the West
26 Virginia School for the deaf, all of whom shall serve ex-
27 officio;

28 (b) Seven persons appointed by the governor, at least

29 three of whom are deaf or hard-of-hearing, one of whom
30 is the parent of a deaf child, one of whom is a certified
31 teacher of the hearing-impaired, one audiologist and one
32 otolaryngologist. Of the three deaf people, at least two
33 shall be selected from a list of four people recommended
34 by the board of the West Virginia association of the deaf.

§5-14-4. Terms of office; quorum.

1 Members of the commission who do not serve ex
2 officio shall be appointed for the following terms: Three
3 members shall be appointed for a term of three years;
4 three for a term of two years and one for a term of one
5 year. When a vacancy occurs, an appointment shall be
6 made for the unexpired term. The members shall
7 annually elect a chairman. A majority of the members
8 constitutes a quorum for the transaction of business.

§5-14-5. Powers and duties of the commission; register of hearing-impaired; duty to report to the commission; census; information clearinghouse; coordination of interpreters; outreach programs; seminars and training sessions.

1 The commission shall maintain a complete register of
2 persons who are deaf or hard-of-hearing in the state. For
3 each hearing-impaired person, the register shall describe the condition and cause of the hearing problem,
4 the person's capacity for education and industrial
5 training and any other facts the commission considers
6 valuable. Identifying information contained in the
7 register is confidential: *Provided*, That information
8 collected and maintained in the register will be
9 available upon request to other government agencies in
10 order to facilitate services to their hearing-impaired
11 clients. Every health, educational and social agency, and
12 physician or other medical professional serving hearing-impaired individuals shall report to the commission, in
13 writing, the name, age and residence of persons who are
14 deaf or hard-of-hearing.
15
16

17 In addition to the register, the commission is responsible for conducting and maintaining a census of both
18 the deaf and hard-of-hearing populations in West
19 Virginia. Such census shall contain state, county and
20

21 city figures.

22 The commission shall maintain a clearinghouse of
23 information, the purpose of which is to aid hearing-
24 impaired persons and others in obtaining appropriate
25 services or information about such services including,
26 but not limited to, education, communication (including
27 interpreters), group home facilities, independent living
28 skills, recreational facilities, employment, vocational
29 training, health and mental health services, substance
30 abuse and other services necessary to assure their ability
31 to function in society. The commission shall consult
32 existing public and private agencies and organizations
33 in compiling and maintaining the clearinghouse.

34 The commission shall establish, maintain and coordi-
35 nate a statewide service to provide courts, state and local
36 legislative bodies and others with a list of qualified and
37 certified interpreters for the deaf and a list of qualified
38 and certified teachers of American sign language. To
39 establish and maintain these lists the commission may
40 accept the certification of the National Registry of
41 Interpreters for the Deaf and/or the state established
42 quality assurance evaluation.

43 The commission shall develop an outreach program to
44 familiarize the public with the rights and needs of
45 hearing-impaired people and of available services.

46 The commission shall investigate the condition of the
47 hearing-impaired in this state with particular attention
48 to those who are aged, homeless, needy, victims of
49 rubella and victims of abuse or neglect. It shall
50 determine the means the state possesses for establishing
51 group homes for its hearing-impaired citizens and the
52 need for additional facilities. The commission shall also
53 determine the advisability and necessity of providing
54 services to the multihandicapped hearing-impaired.

§5-14-6. Seminars and training sessions.

1 The commission may establish one or more training
2 sessions or workshops for the teaching of interpretive
3 skills, in-service training and counseling for the deaf
4 and hard-of-hearing. Seminars and training sessions

5 may be conducted and are encouraged to work with the
6 existing facilities and organizations established to
7 accomplish the same goals.

§5-14-7. Assistance of other agencies.

1 To effectuate the purposes of this article, the commis-
2 sion may request from any department, board, bureau,
3 commission or other agency of the state, and the same
4 are authorized to provide such assistance, services and
5 data as will enable the commission to properly carry out
6 its powers and duties hereunder.

§5-14-8. Executive director; staff.

1 There shall be within the commission an executive
2 director who shall be appointed by the commission and
3 whose compensation shall be fixed by the commission
4 within the budgetary appropriation thereof. The exec-
5 utive director shall be in the exempt class of civil service
6 and may not be a member of the commission. The
7 executive director may attend all meetings of the
8 commission, as well as its committees, but has no vote
9 on decisions or actions of the commission or its commit-
10 tees. The executive director shall carry out the decisions
11 and actions of the commission, hire all staff, administer
12 all affairs of the commission in accordance with its
13 policies and discharge such other duties as the commis-
14 sion shall from time to time determine. The commission
15 may employ such other officers, employees and clerical
16 assistants as it considers necessary and may fix their
17 compensation within the amounts made available by
18 appropriation. To the extent possible, the executive
19 director shall be hearing-impaired and shall be profi-
20 cient in communicating with hearing-impaired individ-
21 uals using varying communication modes.

§5-14-9. Reports and recommendations.

1 The commission shall make an annual report to the
2 governor and the Legislature which shall include its
3 recommendations and programs.

§5-14-10. Grants and gifts; contracts.

1 The commission, with the approval of the governor,

2 may agree to accept and contract as agent of the state
3 any gift, grant, devise or bequest, including federal
4 grants, for any of the purposes of this article. Any
5 moneys so received may be expended by the commission
6 to effectuate any purpose of this article, subject to the
7 same limitations as to approval of expenditures and
8 audit as are prescribed for state moneys appropriated
9 for the purposes of this article.

10 The commission may enter into contracts with any
11 person, firm, corporation, municipality or governmental
12 agency to effectuate the purposes of this article.

§5-14-11. Reimbursement for expenses.

1 The members of the commission, other than its ex
2 officio members, are entitled to reimbursement for their
3 actual and necessary expenses incurred in the perfor-
4 mance of official duties.

CHAPTER 90

(Com. Sub. for H. B. 2395—By Delegates Pitrolo and Bradley)

[Passed April 5, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight-a, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to horse and dog racing; applications for Sunday racing; local option election procedures; protest procedures against approval; petition calling for a local option election for Sunday racing, and an alternative method for approval or rejection of Sunday racing.

Be it enacted by the Legislature of West Virginia:

That section eight-a, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

PART V-A. SUNDAY RACING.

§19-23-8a. Applications for Sunday racing; local option election procedures; protest procedures against approval.

1 (a) A racing association licensed under the provisions
2 of section one of this article and operating a horse or
3 dog racetrack in a county may make application for
4 permission to conduct horse or dog racing on Sunday,
5 between the hours of one p.m. and six p.m., local time.

6 Such application shall be filed with the racing
7 commission. The racing commission shall prescribe
8 blank forms to be used in making such application.

9 The racing commission, if it finds such application to
10 be in order, may grant tentative approval of such
11 application and, if it grants tentative approval of the
12 application, shall prepare and publish a notice to the
13 public that the racing commission has granted tentative
14 approval of the application, that the racing commission
15 solicits public comment from the citizens of the county
16 and will hold a public hearing in the county on a date
17 specified in the notice in the county wherein the horse
18 racing track or dog racing track is located, that the
19 racing commission shall take such comment into
20 consideration in deciding whether or not to grant or
21 deny final approval, and that the racing commission will
22 make final approval of such application at the expira-
23 tion of sixty days from the date of the first publication
24 of such notice, which date shall be specified in said
25 notice, unless within that time in accordance with
26 subsection (c) of this section, the county commission of
27 the county in which such racetrack is located shall order
28 an election. Such notice shall be published as a Class II
29 legal advertisement in compliance with the provisions of
30 article three, chapter fifty-nine of this code, and the
31 publication area for such publication shall be the county
32 in which the racetrack is located: *Provided*, That prior
33 to granting final approval hereunder, the racing
34 commission shall solicit public comment from the
35 citizens of the county, and hold a public hearing in the
36 county on a date specified in the hearing notice specified
37 above, in the county wherein the horse racing track or
38 dog racing track is located and shall take such comment

39 into consideration in deciding whether or not to grant
40 final tentative approval. If no such election is ordered,
41 the racing commission shall proceed to consider final
42 approval of the application.

43 (b) The county commission shall, upon the written
44 petition of qualified voters residing within the county
45 equal to at least fifteen percent of the number of persons
46 who voted in that county in the next preceding general
47 election, received within the period specified in subsection (a) of this section, which petition may be in any
48 number of counterparts, order an election to determine
49 whether it is the will of the voters of said county that
50 racing be permitted on Sundays in said county, which
51 election shall be held at the next primary or general
52 election held in such county. The racing commission
53 shall permit such racing pending certification of the
54 results of the election.
55

56 (c) If such election is ordered, the county commission
57 shall give notice of such election by publication of such
58 notice as a Class II-0 legal advertisement in accordance
59 with the provisions of article three, chapter fifty-nine of
60 this code. Such notice shall be published within twenty-
61 one consecutive days next preceding the date of said
62 election.

63 (d) The ballot, or the ballot labels where voting
64 machines are used, shall have printed thereon substantially the following:
65

66 "Shall the West Virginia Racing Commission be
67 authorized to approve horse racing on Sundays between
68 the hours of one p.m. and six p.m. in _____ County,
69 West Virginia?

70 ☐ Yes ☐ No

71 (Place a cross mark in the square opposite your
72 choice.)"

73 In a county in which dog racing is conducted, the term
74 "dog racing" shall be substituted for "horse racing" on
75 the ballot or ballot label.

76 (e) Each individual qualified to vote in said county

77 shall be qualified to vote at such election. The votes in
78 said election shall be counted and returns made by the
79 election officers and the results certified by the
80 commissioners of election to said county commission,
81 which shall canvass the ballots, all in accordance with
82 the laws of this state relating to general elections insofar
83 as the same are applicable. The county commission
84 shall, without delay, canvass the votes cast at such
85 election and certify the results thereof to the racing
86 commission, and shall transmit a certified copy of said
87 results to the secretary of state.

88 (f) After the certification of the results of such
89 election, the racing commission shall: (1) grant final
90 approval of an application for a license which contains
91 racing dates which fall on Sunday if a majority of the
92 voters voting at such election vote yes, and on such
93 racing dates all racing and other activities authorized
94 by this article shall be lawful, any other provisions of
95 this code to the contrary notwithstanding; or (2) deny
96 final approval of an application for a license which
97 contains racing dates which fall on Sunday if less than
98 a majority of the voters voting at such election vote yes.

99 (g) After an election to determine whether it is the
100 will of the voters of said county that racing be permitted
101 on Sundays in said county, another election on such issue
102 shall not be held for a period of five years.

103 (h) After five years from such final approval, it shall
104 be the duty of the county commission upon a petition in
105 writing of qualified voters residing within the county
106 equal to at least fifteen percent of the number of persons
107 who voted in that county in the next preceding general
108 election, which petition may be in any number of
109 counterparts, to order an election to determine whether
110 it is the will of the voters of said county that racing on
111 Sundays be discontinued in said county. The provisions
112 of subsections (c) and (e) of this section shall govern said
113 election. The ballot, or the ballot labels where voting
114 machines are used, shall have printed thereon substan-
115 tially the following:

116 "Shall racing of horses on Sunday in _____ County,
117 West Virginia, be discontinued?

118 ☐ Yes ☐ No

119 (Place a cross mark in the square opposite your
120 choice.)"

121 In a county in which dog racing is conducted, the
122 word "dogs" shall be substituted for "horses" on the
123 ballot or ballot label. If it be the will of a majority of
124 the voters of said county that Sunday racing be
125 discontinued in said county, it shall be the duty of the
126 racing commission thereafter, for a period of at least
127 five years and until a subsequent election shall other-
128 wise direct, to deny applications to race on Sundays in
129 said county.

130 (i) Upon the written petition of qualified voters
131 residing within the county equal to at least thirty
132 percent of the number of persons who voted in that
133 county in the next preceding general election, which
134 petition may be in any number of counterparts, pre-
135 sented to the racing commission within sixty days after
136 the expiration of such publication protesting against
137 such tentative approval, the approval may not become
138 effective and another petition may not be filed for a
139 period of five years.

CHAPTER 91

(Com. Sub. for S. B. 6—By Senators Chernenko and Blatnik)

[Passed March 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-a, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting racetrack wagering on property controlled by the racing association that is contiguous to a racetrack, subject to certain requirements.

Be it enacted by the Legislature of West Virginia:

That section twelve-a, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

§19-23-12a. Pari-mutuel wagering on interstate and intrastate horse and dog racing.

1 (1) Notwithstanding any other provisions of this code,
2 a racing association licensed in this state to conduct race
3 meetings may, with the consent of the racing commis-
4 sion and the written approval of the authorized repre-
5 sentative of a majority of the owners and trainers who
6 hold the permit required by section two of this article
7 at the horse racetrack, contract with any legal wagering
8 entity in this or any other state to accept wagers on any
9 race or races conducted by such legal wagering entity.
10 Unless the wager becomes part of the host licensee's
11 pari-mutuel pool, such wagering shall be conducted
12 within the confines of such licensee's racetrack or at a
13 hotel as defined in section three, article six, chapter
14 sixteen of this code, controlled by such licensee and
15 contiguous to the licensee's property, subject to the
16 following requirements:

17 (a) That such hotel contain at least one hundred rooms
18 and be in existence on the effective date of this section;

19 (b) That the licensee shall have invested at least one
20 million dollars in the hotel; and

21 (c) That such hotel is within one-half mile of the
22 licensee's racetrack surface.

23 (2) Such horse association shall retain a basic commis-
24 sion not to exceed seventeen and twenty-five one-
25 hundredths percent of all money wagered, plus an
26 additional amount equal to one and seventy-five one-
27 hundredths percent of the amount wagered each day on
28 all multiple wagers determined by a combination of two
29 winning horses, including, but not limited to, the daily
30 double, quinella and perfecta or plus an additional
31 amount equal to seven and seventy-five one-hundredths
32 percent of the amount wagered each day on all trifecta

33 wagers or any other multiple wager which involves a
34 single betting interest on three or more horses. Break-
35 age shall be calculated and distributed in the manner
36 provided by subsection (c), section nine of this article.

37 (3) The commission deducted by any licensee from the
38 pari-mutuel pools on dog racing shall not exceed sixteen
39 and one-fourth percent of the total of such pari-mutuel
40 pools for the day.

41 (4) Out of the commission retained or deducted by a
42 licensee under the provisions of subsections (2) and (3)
43 of this section, the licensee shall pay one tenth of one
44 percent into the general fund of the county commission
45 of the county in which the racetrack is located, except
46 if within a municipality, then to such municipality's
47 general fund.

48 (5) The association shall pay each day a pari-mutuel
49 pools tax calculated under the provisions of section ten
50 of this article.

51 (6) After deducting the county or municipal share
52 provided for in subsection (4) of this section and the
53 pari-mutuel pools tax required by subsection (5) of this
54 section, and the amount required to be paid under the
55 terms of the contract with the legal wagering entity of
56 this or another state and the cost of transmission, the
57 horse racing association shall make a deposit equal to
58 fifty percent of the remainder into the purse fund
59 established under the provisions of subdivision (b),
60 subsection (1), section nine of this article.

61 (7) All of the provisions of the "Federal Interstate
62 Horseracing Act of 1978," also known as Public Law 95-
63 515, section 3001-3007 of title 15, U.S. Code, shall be
64 instructive as the intent of this section.

65 (8) For the purposes of this section the words "legal
66 wagering entity" shall be limited to any person engaged
67 in horse racing or dog racing pursuant to a license or
68 other permission granted by the state in which such
69 person's racetrack is situated and conducting race
70 meetings, with a pari-mutuel wagering system permit-
71 ted under that state's laws and in which the participants
72 are wagering with each other and not the operator.

CHAPTER 92

(Com. Sub. for H. B. 2516—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, eight, nine and eleven, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the human rights commission; policy; powers; objects; functions; services; definitions; adding discrimination on the grounds of familial status as an unlawful discriminatory practice; exemptions; complaints; subpoenae and subpoenae duces tecum; hearings; delegation of authority to hearing examiners; commission review of hearing examiner's final decision; conciliation agreements; unlawful discriminatory practices generally; and appeal and enforcement of commission orders.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, eight, nine and eleven, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 11. HUMAN RIGHTS COMMISSION.

- §5-11-2. Declaration of policy.
- §5-11-3. Definitions.
- §5-11-4. Human rights commission continued; status, powers and objects.
- §5-11-8. Commission powers; functions; services.
- §5-11-9. Unlawful discriminatory practices.
- §5-11-11. Appeal and enforcement of commission orders.

§5-11-2. Declaration of policy.

- 1 It is the public policy of the state of West Virginia to
- 2 provide all of its citizens equal opportunity for employ-
- 3 ment, equal access to places of public accommodations,
- 4 and equal opportunity in the sale, purchase, lease, rental
- 5 and financing of housing accommodations or real
- 6 property. Equal opportunity in the areas of employment
- 7 and public accommodations is hereby declared to be a

8 human right or civil right of all persons without regard
9 to race, religion, color, national origin, ancestry, sex,
10 age, blindness or handicap. Equal opportunity in
11 housing accommodations or real property is hereby
12 declared to be a human right or civil right of all persons
13 without regard to race, religion, color, national origin,
14 ancestry, sex, blindness, handicap, or familial status.

15 The denial of these rights to properly qualified
16 persons by reason of race, religion, color, national origin,
17 ancestry, sex, age, blindness, handicap, or familial
18 status is contrary to the principles of freedom and
19 equality of opportunity and is destructive to a free and
20 democratic society.

§5-11-3. Definitions.

1 When used in this article:

2 (a) The term "person" means one or more individuals,
3 partnerships, associations, organizations, corporations,
4 labor organizations, cooperatives, legal representatives,
5 trustees, trustees in bankruptcy, receivers and other
6 organized groups of persons;

7 (b) The term "commission" means the West Virginia
8 human rights commission;

9 (c) The term "director" means the executive director
10 of the commission;

11 (d) The term "employer" means the state, or any
12 political subdivision thereof, and any person employing
13 twelve or more persons within the state: *Provided*, That
14 such terms shall not be taken, understood or construed
15 to include a private club;

16 (e) The term "employee" shall not include any individ-
17 ual employed by his parents, spouse or child, or in the
18 domestic service of any person;

19 (f) The term "labor organization" includes any
20 organization which exists for the purpose, in whole or
21 in part, for collective bargaining or for dealing with
22 employers concerning grievances, terms or conditions of
23 employment, or for other mutual aid or protection in
24 relation to employment;

25 (g) The term "employment agency" includes any
26 person undertaking with or without compensation to
27 procure, recruit, refer or place employees. A newspaper
28 engaged in the activity of advertising in the normal
29 course of its business shall not be deemed to be an
30 employment agency;

31 (h) The term "discriminate" or "discrimination"
32 means to exclude from, or fail or refuse to extend to,
33 a person equal opportunities because of race, religion,
34 color, national origin, ancestry, sex, age, blindness,
35 handicap, or familial status and includes to separate or
36 segregate;

37 (i) The term "unlawful discriminatory practices"
38 includes only those practices specified in section nine of
39 this article;

40 (j) The term "place of public accommodations" means
41 any establishment or person, as defined herein, includ-
42 ing the state, or any political or civil subdivision thereof,
43 which offers its services, goods, facilities or accommo-
44 dations to the general public, but shall not include any
45 accommodations which are in their nature private;

46 (k) The term "housing accommodations" means any
47 building or portion thereof, which is used or intended
48 for use as the residence or sleeping place of one or more
49 persons. Nothing contained in this definition or this
50 article shall apply to the rental of a room or rooms in
51 a rooming house occupied by the owner as a place of
52 residence and containing no more than four rented
53 rooms, or rooms to be rented;

54 (l) The term "real property" includes real estate,
55 lands, leaseholds, commercial or industrial buildings
56 and any vacant land offered for sale or rent on which
57 the construction of a housing accommodation, commer-
58 cial or industrial building is intended, and any land
59 operated as a trailer camp or rented or leased for the
60 use, parking or storage of mobile homes or house
61 trailers;

62 (m) The term "real estate broker" includes any
63 person, firm or corporation who, for a fee, commission

64 or other valuable consideration, or by reason of a
65 promise or reasonable expectation thereof, lists for sale,
66 sells, exchanges, buys or rents, or offers or attempts to
67 negotiate a sale, exchange, purchase, or rental of real
68 estate or an interest therein, or collects or offers or
69 attempts to collect rent for the use of real estate or
70 solicits for a prospective purchaser or assists or directs
71 in the procuring of prospects or the negotiation or
72 closing of any transaction which does or is contemplated
73 to result in the sale, exchange, leasing, renting or
74 auctioning of any real estate or negotiates, offers or
75 attempts or agrees to negotiate a loan secured or to be
76 secured by mortgage or other encumbrance upon
77 transfer of any real estate for others, or any person who,
78 for pecuniary gain or expectation of pecuniary gain,
79 conducts a public or private competitive sale of lands or
80 any interest in lands. In the sale of lots, the term "real
81 estate broker" shall also include any person, partner-
82 ship, association or corporation employed by or on behalf
83 of the owner or owners of lots or other parcels of real
84 estate, at a stated salary, or upon a commission, or upon
85 a salary and commission, or otherwise to sell such real
86 estate, or any parts thereof, in lots or other parcels, and
87 who shall sell or exchange, or offer or attempt or agree
88 to negotiate the sale or exchange, of any such lot or
89 parcel of real estate. A newspaper engaged in the
90 activity of advertising in the normal course of its
91 business shall not be deemed to be a real estate broker;

92 (n) The term "real estate salesman" includes any
93 person who, for compensation, valuable consideration or
94 commission, or other thing of value, or by reason of a
95 promise or reasonable expectation thereof, is employed
96 by and operates under the supervision of a real estate
97 broker to sell, buy or offer to buy or negotiate the
98 purchase, sale or exchange of real estate, offers or
99 attempts to negotiate a loan secured or to be secured by
100 a mortgage or other encumbrance upon or transfer of
101 real estate for others, or to collect rents for the use of
102 real estate, or to solicit for prospective purchasers or
103 lessees of real estate, or who is employed by a licensed
104 real estate broker to sell or offer to sell lots or other
105 parcels of real estate, at a stated salary, or upon a

106 commission, or upon a salary and commission, or
107 otherwise to sell real estate, or any parts thereof, in lots
108 or other parcels;

109 (o) The term "purchaser" includes any occupant,
110 prospective occupant, lessee, prospective lessee, renter,
111 prospective renter, buyer or prospective buyer;

112 (p) The term "owner" shall include the owner, lessee,
113 sublessee, assignee, manager, agents, or other person,
114 firm or corporation having the right to sell, rent or lease
115 any housing accommodation or real property within the
116 state of West Virginia or any agent of any of these;

117 (q) The term "age" means the age of forty or above;

118 (r) The term "rooming house" means a house or
119 building where there are one or more bedrooms which
120 the proprietor can spare for the purpose of giving
121 lodgings to such persons as he chooses to receive;

122 (s) For the purpose of this article, a person shall be
123 considered to be blind only if his central visual acuity
124 does not exceed twenty/two hundred in the better eye
125 with correcting lenses, or if his visual acuity is greater
126 than twenty/two hundred but is occasioned by a
127 limitation in the fields of vision such that the widest
128 diameter of the visual field subtends an angle no greater
129 than twenty degrees;

130 (t) The term "handicap" means a person who:

131 (1) Has a mental or physical impairment which
132 substantially limits one or more of such person's major
133 life activities; the term "major life activities" includes
134 functions such as caring for one's self, performing
135 manual tasks, walking, seeing, hearing, speaking,
136 breathing, learning, and working;

137 (2) Has a record of such impairment; or

138 (3) Is regarded as having such an impairment.

139 For the purposes of this article, this term does not
140 include persons whose current use of or addiction to
141 alcohol or drugs prevents such individual from perform-
142 ing the duties of the job in question or whose employ-

143 ment, by reason of such current alcohol or drug abuse,
144 would constitute a direct threat to property or the safety
145 of others.

146 (u) The term "familial status" means one or more
147 individuals (who have not attained the age of eighteen
148 years) being domiciled with:

149 (1) A parent or another person having legal custody
150 of such individual or individuals; or

151 (2) The designee of such parent or other person
152 having such custody, with the written permission of
153 such parent or other person. The protections afforded
154 against discrimination on the basis of familial status
155 shall apply to any person who is pregnant or is in the
156 process of securing legal custody of any individual who
157 has not attained the age of eighteen years. Nothing in
158 this definition restricts advertisements of dwellings
159 which are intended and operated for occupancy by older
160 persons and which constitute housing for older persons.

§5-11-4. Human rights commission continued; status, powers and objects.

1 The West Virginia human rights commission, hereto-
2 fore created, is hereby continued. The commission shall
3 have the power and authority and shall perform the
4 functions and services as in this article prescribed and
5 as otherwise provided by law. The commission shall
6 encourage and endeavor to bring about mutual under-
7 standing and respect among all racial, religious and
8 ethnic groups within the state and shall strive to
9 eliminate all discrimination in employment and places
10 of public accommodations by virtue of race, religion,
11 color, national origin, ancestry, sex, age, blindness or
12 handicap and shall strive to eliminate all discrimination
13 in the sale, purchase, lease, rental or financing of
14 housing and other real property by virtue of race,
15 religion, color, national origin, ancestry, sex, blindness,
16 handicap, or familial status.

§5-11-8. Commission powers; functions; services.

1 The commission is hereby authorized and empowered:

2 (a) To cooperate and work with federal, state and
3 local government officers, units, activities and agencies
4 in the promotion and attainment of more harmonious
5 understanding and greater equality of rights between
6 and among all racial, religious and ethnic groups in this
7 state;

8 (b) To enlist the cooperation of racial, religious and
9 ethnic units, community and civic organizations,
10 industrial and labor organizations and other identifiable
11 groups of the state in programs and campaigns devoted
12 to the advancement of tolerance, understanding and the
13 equal protection of the laws of all groups and peoples;

14 (c) To receive, investigate and pass upon complaints
15 alleging discrimination in employment or places of
16 public accommodations, because of race, religion, color,
17 national origin, ancestry, sex, age, blindness or han-
18 dicap, and complaints alleging discrimination in the
19 sale, purchase, lease, rental and financing of housing
20 accommodations or real property because of race,
21 religion, color, national origin, ancestry, sex, blindness,
22 handicap, or familial status, and to initiate its own
23 consideration of any situations, circumstances or
24 problems, including therein any racial, religious or
25 ethnic group tensions, prejudice, disorder or discrimina-
26 tion reported or existing within the state relating to
27 employment, places of public accommodations, housing
28 accommodations and real property;

29 (d) To hold and conduct public and private hearings
30 in the county where the respondent resides or transacts
31 business or where agreed to by the parties or where the
32 acts complained of occurred, on complaints, matters and
33 questions before the commission and, in connection
34 therewith, relating to discrimination in employment, or
35 places of public accommodations, housing accommoda-
36 tions or real property and during the investigation of
37 any formal complaint before the commission relating to
38 employment, places of public accommodations, housing
39 accommodations or real property to:

40 (1) Issue subpoenas and subpoenas duces tecum upon
41 the approval of the executive director or the chairperson

42 of the commission; administer oaths; take the testimony
43 of any person under oath; and make reimbursement for
44 travel and other reasonable and necessary expenses in
45 connection with such attendance;

46 (2) Furnish copies of public hearing records to parties
47 involved therein upon their payment of the reasonable
48 costs thereof to the commission;

49 (3) Delegate to a hearing examiner who shall be an
50 attorney, duly licensed to practice law in West Virginia,
51 the power and authority to hold and conduct hearings,
52 as herein provided, to determine all questions of fact and
53 law presented during the hearing and to render a final
54 decision on the merits of the complaint, subject to the
55 review of the commission as hereinafter set forth.

56 Any respondent or complainant who shall feel ag-
57 grieved at any final action of a hearing examiner shall
58 file a written notice of appeal with the commission by
59 serving such notice on the executive director and upon
60 all other parties within thirty days after receipt of the
61 hearing examiner's decision. The commission shall limit
62 its review upon such appeals to whether the hearing
63 examiner's decision is:

64 (a) In conformity with the constitution and the laws
65 of the state and the United States;

66 (b) Within the commission's statutory jurisdiction or
67 authority;

68 (c) Made in accordance with procedures required by
69 law or established by appropriate rules or regulations
70 of the commission;

71 (d) Supported by substantial evidence on the whole
72 record; or

73 (e) Not arbitrary, capricious or characterized by
74 abuse of discretion or clearly unwarranted exercise of
75 discretion.

76 (4) To enter into conciliation agreements and consent
77 orders.

78 Each conciliation agreement shall include provisions

79 requiring the respondent to refrain from the commission
80 of unlawful discriminatory practices in the future and
81 shall contain such further provisions as may be agreed
82 upon by the commission and the respondent.

83 If the respondent and the commission agree upon
84 conciliation terms, the commission shall serve upon the
85 complainant a copy of the proposed conciliation agree-
86 ment. If the complainant agrees to the terms of the
87 agreement or fails to object to such terms within fifteen
88 days after its service upon him, the commission shall
89 issue an order embodying such conciliation agreement.
90 If the complainant objects to the agreement, he shall
91 serve a specification of his objections upon the commis-
92 sion within such period. Unless such objections are met
93 or withdrawn within ten days after service thereof, the
94 commission shall notice the complaint for hearing.

95 Notwithstanding any other provisions of this section,
96 the commission may, where it finds the terms of the
97 conciliation agreement to be in the public interest,
98 execute such agreement, and limit the hearing to the
99 objections of the complainant.

100 If a conciliation agreement is entered into, the
101 commission shall serve a copy of the order embodying
102 such agreement upon all parties to the proceeding.

103 Not later than one year from the date of a conciliation
104 agreement, the commission shall investigate whether
105 the respondent is complying with the terms of such
106 agreement. Upon a finding of noncompliance, the
107 commission shall take appropriate action to assure
108 compliance;

109 (5) To apply to the circuit court of the county where
110 the respondent resides or transacts business for enforce-
111 ment of any conciliation agreement or consent order by
112 seeking specific performance of such agreement or
113 consent order;

114 (6) To issue cease and desist orders against any person
115 found, after a public hearing, to have violated the
116 provisions of this article or the rules and regulations of
117 the commission;

118 (7) To apply to the circuit court of the county where
119 the respondent resides or transacts business for an order
120 enforcing any lawful cease and desist order issued by
121 the commission;

122 (e) To recommend to the governor and Legislature
123 policies, procedures, practices and legislation in matters
124 and questions affecting human rights;

125 (f) To delegate to its executive director such powers,
126 duties and functions as may be necessary and expedient
127 in carrying out the objectives and purposes of this
128 article;

129 (g) To prepare a written report on its work, functions
130 and services for each year ending on the thirtieth day
131 of June and to deliver copies thereof to the governor on
132 or before the first day of December next thereafter;

133 (h) To do all other acts and deeds necessary and
134 proper to carry out and accomplish effectively the
135 objects, functions and services contemplated by the
136 provisions of this article, including the promulgation of
137 legislative rules in accordance with the provisions of
138 article three, chapter twenty-nine-a of this code,
139 implementing the powers and authority hereby vested
140 in the commission;

141 (i) To create such advisory agencies and conciliation
142 councils, local, regional or statewide, as in its judgment
143 will aid in effectuating the purposes of this article, to
144 study the problems of discrimination in all or specific
145 fields or instances of discrimination because of race,
146 religion, color, national origin, ancestry, sex, age,
147 blindness, handicap, or familial status; to foster, through
148 community effort or otherwise, goodwill, cooperation
149 and conciliation among the groups and elements of the
150 population of this state, and to make recommendations
151 to the commission for the development of policies and
152 procedures, and for programs of formal and informal
153 education, which the commission may recommend to the
154 appropriate state agency. Such advisory agencies and
155 conciliation councils shall be composed of representative
156 citizens serving without pay. The commission may itself
157 make the studies and perform the acts authorized by

158 this subdivision. It may, by voluntary conferences with
159 parties in interest, endeavor by conciliation and persua-
160 sion to eliminate discrimination in all the stated fields
161 and to foster goodwill and cooperation among all
162 elements of the population of the state;

163 (j) To accept contributions from any person to assist
164 in the effectuation of the purposes of this section and to
165 seek and enlist the cooperation of private, charitable,
166 religious, labor, civic and benevolent organizations for
167 the purposes of this section;

168 (k) To issue such publications and such results of
169 investigation and research as in its judgment will tend
170 to promote goodwill and minimize or eliminate discrim-
171 ination: *Provided*, That the identity of the parties
172 involved shall not be disclosed.

§5-11-9. Unlawful discriminatory practices.

1 (a) It shall be an unlawful discriminatory practice,
2 unless based upon a bona fide occupational qualification,
3 or except where based upon applicable security regula-
4 tions established by the United States or the state of
5 West Virginia or its agencies or political subdivisions:

6 (1) For any employer to discriminate against an
7 individual with respect to compensation, hire, tenure,
8 terms, conditions or privileges of employment if the
9 individual is able and competent to perform the services
10 required even if such individual is blind or handicapped:
11 *Provided*, That it shall not be unlawful discriminatory
12 practice for an employer to observe the provisions of any
13 bona fide pension, retirement, group or employee
14 insurance, or welfare benefit plan or system not adopted
15 as a subterfuge to evade the provisions of this
16 subdivision;

17 (2) For any employer, employment agency or labor
18 organization, prior to the employment or admission to
19 membership, to (A) elicit any information or make or
20 keep a record of or use any form of application or
21 application blank containing questions or entries
22 concerning the race, religion, color, national origin,
23 ancestry, sex or age of any applicant for employment or

24 membership; (B) print or publish or cause to be printed
25 or published any notice or advertisement relating to
26 employment or membership indicating any preference,
27 limitation, specifications or discrimination based upon
28 race, religion, color, national origin, ancestry, sex or
29 age; or (C) deny or limit, through a quota system,
30 employment or membership because of race, religion,
31 color, national origin, ancestry, sex, age, blindness or
32 handicap;

33 (3) For any labor organization because of race,
34 religion, color, national origin, ancestry, sex, age,
35 blindness or handicap of any individual to deny full and
36 equal membership rights to any individual or otherwise
37 to discriminate against such individual with respect to
38 hire, tenure, terms, conditions or privileges of employ-
39 ment or any other matter, directly or indirectly, related
40 to employment;

41 (4) For an employer, labor organization, employment
42 agency or any joint labor-management committee
43 controlling apprentice training programs to:

44 (A) Select individuals for an apprentice training
45 program registered with the state of West Virginia on
46 any basis other than their qualifications as determined
47 by objective criteria which permit review;

48 (B) Discriminate against any individual with respect
49 to his right to be admitted to or participate in a
50 guidance program, an apprenticeship training program,
51 on-the-job training program, or other occupational
52 training or retraining program;

53 (C) Discriminate against any individual in his pursuit
54 of such programs or to discriminate against such a
55 person in the terms, conditions or privileges of such
56 programs;

57 (D) Print or circulate or cause to be printed or
58 circulated any statement, advertisement or publication,
59 or to use any form of application for such programs or
60 to make any inquiry in connection with such program
61 which expresses, directly or indirectly, discrimination
62 or any intent to discriminate, unless based upon a bona
63 fide occupational qualification;

64 (5) For any employment agency to fail or refuse to
65 classify properly, refer for employment or otherwise to
66 discriminate against any individual because of his race,
67 religion, color, national origin, ancestry, sex, age,
68 blindness or handicap;

69 (6) For any person being the owner, lessee, proprietor,
70 manager, superintendent, agent or employee of any
71 place of public accommodations to:

72 (A) Refuse, withhold from or deny to any individual
73 because of his race, religion, color, national origin,
74 ancestry, sex, age, blindness or handicap, either directly
75 or indirectly, any of the accommodations, advantages,
76 facilities, privileges or services of such place of public
77 accommodations;

78 (B) Publish, circulate, issue, display, post or mail,
79 either directly or indirectly, any written or printed
80 communication, notice or advertisement to the effect
81 that any of the accommodations, advantages, facilities,
82 privileges or services of any such place shall be refused,
83 withheld from or denied to any individual on account of
84 race, religion, color, national origin, ancestry, sex, age,
85 blindness or handicap, or that the patronage or custom
86 thereof of any individual, belonging to or purporting to
87 be of any particular race, religion, color, national origin,
88 ancestry, sex or age or who is blind or handicapped, is
89 unwelcome, objectionable, not acceptable, undesired or
90 not solicited;

91 (7) For the owner, lessee, sublessee, assignee or
92 managing agent of, or other person having the right of
93 ownership or possession of or the right to sell, rent,
94 lease, assign or sublease any housing accommodations or
95 real property or part or portion thereof, or any agent,
96 or employee of any of them; or for any real estate broker,
97 real estate salesman, or employee or agent thereof:

98 (A) To refuse to sell, rent, lease, assign or sublease or
99 otherwise to deny to or withhold from any person or
100 group of persons any housing accommodations or real
101 property, or part or portion thereof, because of race,
102 religion, color, national origin, ancestry, sex, blindness,
103 handicap or familial status of such person or group of
104 persons: *Provided*, That this provision shall not require

105 any person named herein to rent, lease, assign or
106 sublease any housing accommodations or real property,
107 or any portion thereof to both sexes where the facilities
108 of such housing accommodations or real property, or any
109 portion thereof, are suitable for only one sex;

110 (B) To discriminate against any person or group of
111 persons because of the race, religion, color, national
112 origin, ancestry, sex, blindness, handicap, or familial
113 status of such person or group of persons in the terms,
114 conditions or privileges of the sale, rental or lease of any
115 housing accommodations or real property, or part or
116 portion thereof, or in the furnishing of facilities or
117 services in connection therewith;

118 (C) To print, publish, circulate, issue, display, post or
119 mail, or cause to be printed, published, circulated,
120 issued, displayed, posted or mailed any statement,
121 advertisement, publication, or sign or to use any form
122 of application for the purchase, rental, lease, assignment
123 or sublease of any housing accommodations or real
124 property, or part or portion thereof, or to make any
125 record or inquiry in connection with the prospective
126 purchase, rental, lease, assignment or sublease of any
127 housing accommodations or real property or part or
128 portion thereof, which expresses, directly or indirectly,
129 any discrimination as to race, religion, color, national
130 origin, ancestry, sex, blindness, handicap, or familial
131 status or any intent to make any such discrimination
132 and the production of any statement, advertisement,
133 publicity, sign, form of application, record or inquiry
134 purporting to be made by any such person shall be
135 prima facie evidence in any action that the same was
136 authorized by such person: *Provided*, That with respect
137 to sex discrimination, this provision shall not apply to
138 any person named herein whose housing accommoda-
139 tions or real property, or any portion thereof, have
140 facilities which are suitable for only one sex;

141 (8) For any person or financial institution or lender
142 to whom application is made for financial assistance for
143 the purchase, acquisition, construction, rehabilitation,
144 repair or maintenance of any housing accommodations

145 or real property, or part or portion thereof, or any agent
146 or employee thereof to:

147 (A) Discriminate against any person or group of
148 persons because of race, religion, color, national origin,
149 ancestry, sex, blindness, handicap, or familial status of
150 such person or group of persons or of the prospective
151 occupants or tenants of such housing accommodations or
152 real property, or part or portion thereof, in the granting,
153 withholding, extending, modifying or renewing, or in
154 the fixing of the rates, terms, conditions or provisions
155 of any such financial assistance or in the extension of
156 services in connection therewith;

157 (B) Use any form of application for such financial
158 assistance or to make any record of inquiry in connec-
159 tion with applications for such financial assistance
160 which expresses, directly or indirectly, any discrimina-
161 tion as to race, religion, color, national origin, ancestry,
162 sex, blindness, handicap, or familial status or any intent
163 to make any such discrimination;

164 (9) For any person, employer, employment agency,
165 labor organization, owner, real estate broker, real estate
166 salesman or financial institution to:

167 (A) Engage in any form of threats or reprisal, or to
168 engage in, or hire, or conspire with others to commit
169 acts or activities of any nature, the purpose of which is
170 to harass, degrade, embarrass, or cause physical harm
171 or economic loss or to aid, abet, incite, compel or coerce
172 any person to engage in any of the unlawful discrimi-
173 natory practices defined in this section;

174 (B) Willfully obstruct or prevent any person from
175 complying with the provisions of this article, or to resist,
176 prevent, impede or interfere with the commission or any
177 of its members or representatives in the performance of
178 duty under this article;

179 (C) Engage in any form of reprisal or otherwise
180 discriminate against any person because he has opposed
181 any practices or acts forbidden under this article or
182 because he has filed a complaint, testified or assisted in
183 any proceeding under this article;

184 (D) Induce or attempt to induce for profit any person
185 to sell or rent or to not sell or rent any housing

186 accommodations or real property by representations
187 regarding the entry or prospective entry into the
188 neighborhood of a person or persons who are blind or
189 handicapped or who are of a particular race, religion,
190 color, national origin, ancestry or sex, or a person or
191 persons against whom discrimination on the basis of
192 familial status is prohibited by this article: *Provided*,
193 That for the purposes of this article it shall not be an
194 unlawful discriminatory practice for any person,
195 employer or owner to refuse to make any unreasonable
196 capital expenditure to accommodate the physical or
197 mental impairment of any handicapped person.

198 (b) Solely for purposes of familial status, nothing in
199 subdivision (7) of subsection (a) (other than subsection
200 (c)) of this section shall apply to:

201 (1) Any single-family house sold or rented by an
202 owner: *Provided*, That such private individual owner
203 does not own more than three such single-family houses
204 at any one time: *Provided, however*, That in the case of
205 the sale of any such single-family house by a private
206 individual owner not residing in such house at the time
207 of such sale or who was not the most recent resident of
208 such house prior to such sale, the exemption granted by
209 this subsection shall apply only with respect to one such
210 sale within any twenty-four month period: *Provided*
211 *further*, That such bona fide private individual owner
212 does not own any interest in, nor is there owned or
213 reserved on his behalf, under any express or voluntary
214 agreement, title to or any right to all or a portion of the
215 proceeds from the sale or rental of, more than three such
216 single-family houses at any one time: *And provided*
217 *further*, That the sale or rental of any such single-family
218 house shall be excepted from the application of this
219 subchapter only if such house is sold or rented
220 (A) without the use in any manner of the sales or rental
221 facilities or the sales or rental services of any real estate
222 broker, agent, or salesman, or of such facilities or
223 services of any person in the business of selling or
224 renting dwellings, or of any employee or agent of any
225 such broker, agent, salesman, or person and (B) without
226 the publication, posting or mailing, after notice of any
227 advertisement or written notice in violation of para-

228 graph (C), subdivision (7), subsection (a) of this section;
229 but nothing in this proviso shall prohibit the use of
230 attorneys, escrow agents, abstractors, title companies,
231 and other such professional assistance as necessary to
232 perfect or transfer the title, or

233 (2) Rooms or units in dwellings containing living
234 quarters occupied or intended to be occupied by no more
235 than four families living independently of each other, if
236 the owner actually maintains and occupies one of such
237 living quarters as his residence.

238 (c) For the purposes of subsection (b) of this section,
239 a person shall be deemed to be in the business of selling
240 or renting dwellings if:

241 (1) He has, within the preceding twelve months,
242 participated as principal in three or more transactions
243 involving the sale or rental of any dwelling or any
244 interest therein, or

245 (2) He has, within the preceding twelve months,
246 participated as agent, other than in the sale of his own
247 personal residence in providing sales or rental facilities
248 or sales or rental services in two or more transactions
249 involving the sale or rental of any dwelling or any
250 interest therein, or

251 (3) He is the owner of any dwelling designed or
252 intended for occupancy by, or occupied by, five or more
253 families.

254 (d) (1) Nothing in this article limits the applicability
255 of any reasonable local, state, or federal restrictions
256 regarding the maximum number of occupants permitted
257 to occupy a dwelling. Nor does any provision in this
258 article regarding familial status apply with respect to
259 housing for older persons.

260 (2) As used in this section "housing for older persons"
261 means housing:

262 (A) Provided under any state or federal program that
263 is specifically designed and operated to assist elderly
264 persons (as defined in the state or federal program); or

265 (B) Intended for, and solely occupied by, persons
266 sixty-two years of age or older; or

267 (C) Intended and operated for occupancy by at least
268 one person fifty-five years of age or older per unit. In
269 determining whether housing qualifies as housing for
270 older persons under this subsection, the commission
271 shall develop regulations which require at least the
272 following factors:

273 (i) The existence of significant facilities and services
274 specifically designed to meet the physical or social needs
275 of older persons, or if the provision of such facilities and
276 services is not practicable, that such housing is neces-
277 sary to provide important housing opportunities for
278 older persons; and

279 (ii) That at least eighty percent of the units are
280 occupied by at least one person fifty-five years of age
281 or older per unit; and

282 (iii) The publication of, and adherence to, policies and
283 procedures which demonstrate an intent by the owner
284 or manager to provide housing for persons fifty-five
285 years of age or older.

286 (3) Housing shall not fail to meet the requirements for
287 housing for older persons by reason of:

288 (A) Persons residing in such housing as of the first
289 day of July, one thousand nine hundred eighty-nine, who
290 do not meet the age requirements of paragraphs (B) or
291 (C), subdivision (2) of this subsection: *Provided*, That
292 new occupants of such housing meet the age require-
293 ments of paragraphs (B) or (C), subdivision (2) of this
294 subsection; or

295 (B) Unoccupied units: *Provided*, That such units are
296 reserved for occupancy by persons who meet the age
297 requirements of paragraphs (B) or (C), subdivision
298 (2) of this subsection.

§5-11-11. Appeal and enforcement of commission orders.

1 (a) From any final order of the commission, an
2 application for review may be prosecuted by either
3 party to the supreme court of appeals within thirty days
4 from the receipt thereof by the filing of a petition
5 therefor to such court against the commission and the
6 adverse party as respondents, and the clerk of such
7 court shall notify each of the respondents and the

8 commission of the filing of such petition. The commis-
9 sion shall, within ten days after receipt of such notice,
10 file with the clerk of the court the record of the
11 proceedings had before it, including all the evidence.
12 The court or any judge thereof in vacation may
13 thereupon determine whether or not a review shall be
14 granted. And if granted to a nonresident of this state,
15 he shall be required to execute and file with the clerk
16 before such order or review shall become effective, a
17 bond, with security to be approved by the clerk,
18 conditioned to perform any judgment which may be
19 awarded against him thereon. The commission may
20 certify to the court and request its decision of any
21 question of law arising upon the record, and withhold
22 its further proceeding in the case, pending the decision
23 of court on the certified question, or until notice that the
24 court has declined to docket the same. If a review be
25 granted or the certified question be docketed for
26 hearing, the clerk shall notify the board and the parties
27 litigant or their attorneys and the commission of the fact
28 by mail. If a review be granted or the certified question
29 docketed, the case shall be heard by the court in the
30 manner provided for other cases: *Provided*, That in the
31 following cases the appellant may prosecute the appeal
32 in the circuit court of Kanawha County pursuant to
33 section four, article five, chapter twenty-nine-a of this
34 code: (1) Cases in which the commission awards
35 damages other than back pay exceeding five thousand
36 dollars; (2) cases in which the commission awards back
37 pay exceeding thirty thousand dollars; and (3) cases in
38 which the parties agree that the appeal should be
39 prosecuted in circuit court. In such cases the appellee
40 shall respond within thirty days of filing and the court
41 shall make a determination within the following thirty
42 days: *Provided, however*, That appeals filed erroneously
43 in the circuit court after the first day of April, one
44 thousand nine hundred eighty-seven, and prior to the
45 first day of July, one thousand nine hundred eighty-nine,
46 may be prosecuted in the supreme court of appeals
47 without regard to the time limits specified herein:
48 *Provided further*, That any party adversely affected by
49 the final judgment of the circuit court of Kanawha

50 County may seek review thereof by appeal to the
51 supreme court of appeals pursuant to section one, article
52 six, chapter twenty-nine-a of this code filed within thirty
53 days of entry of the final order of the circuit court.

54 The appeal procedure contained in this subsection
55 shall be the exclusive means of review, notwithstanding
56 the provisions of chapter twenty-nine-a of this code:
57 *Provided*, That such exclusive means of review shall not
58 apply to any case wherein an appeal or a petition for
59 enforcement of a cease and desist order has been filed
60 with a circuit court of this state prior to the first day
61 of April, one thousand nine hundred eighty-seven.

62 (b) In the event that any person shall fail to obey a
63 final order of the commission within thirty days after
64 receipt of the same, or, if applicable, within thirty days
65 after a final order of the circuit court or the supreme
66 court of appeals, a party or the commission may seek
67 an order from the circuit court for its enforcement. Such
68 proceedings shall be initiated by filing of a petition in
69 said court, and served upon the respondent in the
70 manner provided by law for the service of summons in
71 civil actions; a hearing shall be held on such petition
72 within sixty days of the date of service. The court may
73 grant appropriate temporary relief, and shall make and
74 enter upon the pleadings, testimony and proceedings
75 such order as is necessary to enforce the order of the
76 commission or supreme court of appeals.

CHAPTER 93

(Com. Sub. for H. B. 2167—By Delegates Flanigan and White)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight; and to further amend said chapter by adding thereto a new article, designated article eight, all relating to establishment of a charity food bank

advisory committee and assistance fund; requiring local human services offices and the department of human services to provide information and referral service; giving exemption from civil and criminal liability; directing diversion of state surplus food to food banks; establishing collection and distribution centers; setting minimum standards for food banks; directing use of state surplus buildings and equipment for food banks; providing that nonprofit organizations and food stamp programs not be affected; establishing food bank advisory committee and setting method of appointment and terms of members; setting duties of committee; and establishing food bank assistance fund.

Be it enacted by the Legislature of West Virginia:

That article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eight; and that said chapter be further amended by adding thereto a new article, designated article eight, all to read as follows:

Article

2. Department of Human Services and Office of Commissioner of Human Services; Powers, Duties and Responsibilities Generally.
8. Charity Food Banks.

ARTICLE 2. DEPARTMENT OF HUMAN SERVICES AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-8. Information and referral services.

- 1 (a) Each local human services office shall compile,
- 2 maintain and post a current list of charity food banks
- 3 and other emergency food providers in the area served
- 4 by the local food stamp office and refer individuals who
- 5 need food to local programs that may be able to provide
- 6 assistance.

- 7 (b) The department shall utilize its existing statewide
- 8 toll free telephone number to provide emergency food
- 9 information and to refer needy individuals to local
- 10 programs that may be able to provide assistance. The
- 11 department shall publish the telephone number for

- 12 referrals in the emergency telephone numbers section of
13 local telephone books. The department shall display this
14 telephone number in all its offices that issue food
15 stamps.

ARTICLE 8. CHARITY FOOD BANKS.

- §9-8-1. Purpose.
§9-8-2. Donation of food items; exemption from civil and criminal liability.
§9-8-3. Definitions.
§9-8-4. Authorization of donations; diversion of products by directors to organizations.
§9-8-5. Surplus food collection and distribution centers.
§9-8-6. Minimum standards for food banks.
§9-8-7. State surplus buildings and equipment; availability to charity food banks.
§9-8-8. Effect of article on other nonprofit organizations.
§9-8-9. Application of article to food stamp act.
§9-8-10. Charity food bank advisory committee; terms; compensation; officers; duties.
§9-8-11. Charity food bank assistance fund; restriction.

§9-8-1. Purpose.

- 1 The purpose of this article is to address the wide-
2 spread and growing problem of hunger in this state by
3 improving the distribution of food to the hungry,
4 providing a means of funding agencies which distribute
5 food on an emergency basis, gathering and disseminat-
6 ing information related to the problem of hunger,
7 assuring that distribution activities are responsive to the
8 needs of local charity food banks, facilitating the
9 creation of charity food banks and ensuring maximum
10 access to food banks.

§9-8-2. Donation of food items; exemption from civil and criminal liability.

- 1 Any person who makes a good faith donation of
2 prepared or perishable food which appears to be fit for
3 human consumption at the time it is donated to a
4 charitable or nonprofit organization is not liable for
5 damages in any civil action or subject to criminal
6 prosecution for any injury or death due to the condition
7 of such food unless the injury or death is a direct result
8 of the gross negligence, recklessness or intentional
9 misconduct of the donor.

10 A charitable or nonprofit organization or an officer,
11 employee or volunteer of such an organization that in
12 good faith receives and distributes, without charge, food
13 which appears to be fit for human consumption at the
14 time it is distributed is not liable for damages in any
15 civil action or subject to criminal prosecution for any
16 injury or death due to the condition of such food unless
17 the injury or death is a direct result of the gross
18 negligence, recklessness or intentional misconduct of the
19 organization or its officers, employees or volunteer
20 workers.

21 This section applies to all good faith donations of
22 perishable food which is not readily marketable due to
23 appearance, freshness, grade, surplus supply or other
24 conditions.

§9-8-3. Definitions.

1 In this article, unless the context otherwise requires:

2 "Agricultural product" means any fowl, animal,
3 vegetable or other item, product or article which is
4 customary food or which is proper food for human
5 consumption.

6 "Charity food bank" means a nonprofit organization
7 that solicits, stores, or redistributes food products to
8 charitable organizations and individuals for the purpose
9 of feeding needy families and individuals.

10 "Nonprofit charitable organization" means an organ-
11 ization which is organized and operates for a charitable
12 purpose.

**§9-8-4. Authorization of donations; diversion of products
by directors to organizations.**

1 A person engaged in the business of processing,
2 distributing or selling any agricultural product may
3 donate, free of charge, any agricultural product to a
4 charity food bank.

5 To assist in accomplishing the purposes of this section,
6 the director of each department of state government
7 shall divert, whenever possible, surplus agricultural
8 products to organizations operating pursuant to this
9 article.

§9-8-5. Surplus food collection and distribution centers.

1 The department of agriculture shall establish and
2 publicize the services of an information and food
3 collection center for receiving and transmitting infor-
4 mation concerning available agricultural products; or
5 what organization desires or needs donated agricultural
6 products to be donated; and for collecting, receiving,
7 handling, storing and distributing donated agricultural
8 products. A nonprofit charitable organization which
9 regularly needs agricultural products may be listed
10 with a food collection center to be notified if agricultural
11 products are available.

§9-8-6. Minimum standards for food banks.

1 In order to qualify as a charity food bank, an
2 organization shall meet all of the following minimum
3 standards:

4 (a) Have access to storage facilities and refrigeration
5 equipment for the purpose of collecting, receiving,
6 handling, storing and distributing donated agricultural
7 products;

8 (b) Be incorporated as a nonprofit tax exempt organ-
9 ization and eligible as a charitable organization under
10 the Internal Revenue Code (26 United States code
11 section 501 (c) (3)) or affiliated with a qualified
12 organization;

13 (c) Maintain records for the proper control of
14 inventory;

15 (d) Demonstrate the availability of adequate liability
16 insurance to cover the activities conducted pursuant to
17 this article; and

18 (e) Show local support through funding sources,
19 letters of endorsement and a board of directors which
20 reflects the community and population to be served.

§9-8-7. State surplus buildings and equipment; availability to charity food banks.

1 The commissioner of the department of finance and
2 administration shall assist a food bank by locating and

3 providing available state surplus buildings or equip-
4 ment necessary for the operation of a charity food bank
5 for use without charge.

§9-8-8. Effect of article on other nonprofit organizations.

1 Nothing in this article may restrict or limit the
2 operation of any other nonprofit organization which is
3 engaged in the distribution of agricultural products to
4 nonprofit charitable organizations.

§9-8-9. Application of article to food stamp act.

1 Consonant with 7 C.F.R. 273.9(c)(1), programs oper-
2 ated in accordance with this article shall complement
3 and not in any way lessen assistance to families and
4 individuals pursuant to the Food Stamp Act of 1977 as
5 amended, (7 U.S.C. 2011 through 7 U.S.C. 2026).

§9-8-10. Charity food bank advisory committee; terms; compensation; officers; duties.

1 A charity food bank advisory committee is estab-
2 lished. The members shall be appointed by the governor
3 with the advice and consent of the Senate. The commit-
4 tee shall consist of five members who shall serve
5 staggered three year terms. Vacancies occurring shall
6 be filled in the same manner for the balance of the
7 unexpired term.

8 The committee shall consist of three members who
9 have been active members of a food bank, one food
10 industry representative and one member who is actively
11 engaged in agriculture. The committee shall select a
12 chairman and vice chairman. The committee shall meet
13 at the call of the chairman, but at least four times a
14 year. The initial meeting shall be called by the governor
15 within sixty days after the committee has been
16 appointed.

17 The committee shall:

18 (a) Provide information to the citizens of this state
19 regarding food bank programs;

20 (b) Review procedures that assure that storage,
21 transportation and distribution activities conducted

22 under the authority of this article are efficiently carried
23 out and are responsive to the needs of local food banks
24 and community organizations involved in food
25 distribution;

26 (c) Review procedures that assure maximum access
27 for food banks and community organizations involved in
28 food distribution to all available federal, state, county
29 and city surplus food, supplies and equipment and to all
30 potential private contributions;

31 (d) Review procedures that assure that necessary
32 technical assistance is available to facilitate the creation
33 of food banks in areas of this state in which they are
34 needed and to facilitate food banks and community
35 organizations in obtaining and effectively utilizing
36 surplus agricultural commodities; and

37 (e) Submit an annual report to the governor, speaker
38 of the House of Delegates and president of the Senate
39 on or before the first day of January of each year.

§9-8-11. Charity food bank assistance fund; restriction.

1 A charity food bank assistance fund is established
2 which shall consist of moneys provided by appropria-
3 tion. A charity food bank which meets the minimum
4 standards for food banks may qualify, subject to
5 available moneys, for assistance from this fund for any
6 of its operations.

7 Assistance granted pursuant to this article shall be
8 administered by the commissioner of the department of
9 human services. No more than five percent of the
10 assistance granted to a charity food bank pursuant to
11 this article may be used for administrative purposes.

CHAPTER 94

(Com. Sub. for S. B. 367—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend article five, chapter nine of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated

section sixteen-a, relating to the department of human services and medicaid-certified nursing homes; requiring screening of persons applying for admission to or residing in such nursing homes to determine if they have mental illness or mental retardation; and providing for reimbursement of hospitals for certain days required for such screening.

Be it enacted by the Legislature of West Virginia:

That article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section sixteen-a, to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-16a. Medicaid-certified nursing homes; screening of applicants and residents for mental illness; reimbursement of hospitals.

1 (a) The department of human services and depart-
2 ment of health shall cause individuals applying for
3 admission to or residing in a medicaid-certified nursing
4 home to be screened as required by the Omnibus Budget
5 Reconciliation Act of 1987.

6 (b) Effective the first day of April, one thousand nine
7 hundred eighty-nine, hospitals shall receive administra-
8 tive day payment at a rate set by the medicaid agency
9 to reimburse the hospitals for days required for the
10 screening of medicaid eligible patients required by
11 subsection (a) of this section.

12 (c) The secretary of the department of health and
13 human resources is authorized to promulgate rules and
14 regulations to fully implement this section.

CHAPTER 95

(H. B. 2571—By Mr. Speaker, Mr. Chambers, and Delegate Martin)

[Passed March 15, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter five-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated

section twenty-two, to provide that business facilities and projects acquired, constructed or financed, in whole or in part, by the West Virginia industry and jobs development corporation shall not be included in any definition in the code of the term "public improvement."

Be it enacted by the Legislature of West Virginia:

That article one, chapter five-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-two, to read as follows:

ARTICLE 1. WEST VIRGINIA INDUSTRY AND JOBS DEVELOPMENT CORPORATION.

§5C-1-22. Projects not to be considered public improvements.

- 1 No project, enterprise or business facility which
- 2 conducts as its primary activity a manufacturing
- 3 process or other nongovernmental or nonpublic activity
- 4 may be deemed to be a "public improvement" within the
- 5 meaning of the provisions of article five-a, chapter
- 6 twenty-one of this code.

CHAPTER 96

(Com. Sub. for H. B. 2417—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact section eight, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article twenty of said chapter; to amend and reenact section six, article twenty-four of said chapter; to amend and reenact section eight, article twenty-five of said chapter; and to amend section eight, article twenty-five-a of said chapter, all relating to extending of the rate and form filings review period on all rate and form filings involving insurance to sixty days; and notice of rate increase requests.

3 established pursuant to subdivision (2), subsection (c),
4 section three of this article, rules and rates, every rating
5 plan and every modification of any of the foregoing
6 which it proposes to use for casualty insurance to which
7 this article applies.

8 (2) Every insurer shall file with the commissioner,
9 except as to inland marine risks which by general
10 custom of the business are not written according to
11 manual rates or rating plans, every manual, minimum,
12 class rate, rating schedule or rating plan and every
13 other rating rule and every modification of any of the
14 foregoing which it proposes to use for fire and marine
15 insurance to which this article applies. Specific inland
16 marine rates on risks specially rated, made by a rating
17 organization, shall be filed with the commissioner.

18 (b) Every such filing shall state the proposed effective
19 date thereof and shall indicate the character and extent
20 of the coverage contemplated. When a filing is not
21 accompanied by the information upon which the insurer
22 supports such filing, and the commissioner does not have
23 sufficient information to determine whether such filing
24 meets the requirements of this article, he shall require
25 such insurer to furnish the information upon which it
26 supports such filing and in such event the waiting
27 period shall commence as of the date such information
28 is furnished. The information furnished in support of a
29 filing may include (1) the experience or judgment of the
30 insurer or rating organization making the filing, (2) the
31 experience or judgment of the insurer or rating
32 organization in the territorial rate areas established by
33 subdivision (2), subsection (c), section three of this
34 article, (3) its interpretation of any statistical data it
35 relies upon, (4) the experience of other insurers or rating
36 organizations or (5) any other relevant factors. A filing
37 and any supporting information shall be open to public
38 inspection as soon as the filing is received by the
39 commissioner. Any interested party may file a brief
40 with the commissioner supporting his position concern-
41 ing the filing. Any person or organization may file with
42 the commissioner a signed statement declaring and

43 supporting his or its position concerning the filing. Upon
44 receipt of such statement prior to the effective date of
45 the filing, the commissioner shall mail or deliver a copy
46 of such statement to the filer, which may file such reply
47 as it may desire to make. This section shall not be
48 applicable to any memorandum or statement of any kind
49 by any employee of the commissioner.

50 (c) An insurer may satisfy its obligation to make such
51 filing by becoming a member of, or a subscriber to, a
52 licensed rating organization which makes such filings,
53 and by authorizing the commissioner to accept such
54 filings on its behalf: *Provided*, That nothing contained
55 in this article shall be construed as requiring any
56 insurer to become a member of or a subscriber to any
57 rating organization.

58 (d) The commissioner shall review filings as soon as
59 reasonably possible after they have been made in order
60 to determine whether they meet the requirements of this
61 article.

62 (e) Subject to the exceptions specified in subsections
63 (f) and (g) of this section, each filing shall be on file for
64 a waiting period of sixty days before it becomes
65 effective. Upon written application by such insurer or
66 rating organization, the commissioner may authorize a
67 filing which he has reviewed to become effective before
68 the expiration of the waiting period. A filing shall be
69 deemed to meet the requirements of this article unless
70 disapproved by the commissioner within the waiting
71 period.

72 (f) Any special filing with respect to a surety bond
73 required by law or by court or executive order or by
74 order, rule or regulation of a public body, not covered
75 by a previous filing, shall become effective when filed
76 and shall be deemed to meet the requirements of this
77 article until such time as the commissioner reviews the
78 filing and so long thereafter as the filing remains in
79 effect.

80 (g) Specific inland marine rates on risks specially
81 rated by a rating organization shall become effective

82 when filed and shall be deemed to meet the require-
83 ments of this article until such time as the commissioner
84 reviews the filing and so long thereafter as the filing
85 remains in effect.

86 (h) Under such rules and regulations as he shall adopt
87 the commissioner may, by written order, suspend or
88 modify the requirement of filing as to any kind of
89 insurance, subdivision or combination thereof, or as to
90 classes of risks, the rates for which cannot practicably
91 be filed before they are used. Such orders, rules and
92 regulations shall be made known to insurers and rating
93 organizations affected thereby. The commissioner may
94 make such examination as he may deem advisable to
95 ascertain whether any rates affected by such order meet
96 the standards set forth in subsection (b), section three
97 of this article.

98 (i) Upon the written application of the insured,
99 stating his reasons therefor, filed with and approved by
100 the commissioner, a rate in excess of that provided by
101 a filing otherwise applicable may be used on any specific
102 risks.

103 (j) No insurer shall make or issue a contract or policy
104 except in accordance with the filings which are in effect
105 for said insurer as provided in this article or in
106 accordance with subsection (h) or (i) of this section. This
107 subsection shall not apply to contracts or policies for
108 inland marine risks as to which filings are not required.

109 (k) In instances when an insurer files a request for an
110 increase of automobile liability insurance rates in the
111 amount of fifteen percent or more, the insurance
112 commissioner shall provide notice of such increase with
113 the office of the secretary of state to be filed in the state
114 register and shall provide interested persons the
115 opportunity to comment on such request up to the time
116 the commissioner approves or disapproves such rate
117 increase.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE
CORPORATIONS.**

§33-24-6. Commissioner to enforce article; approval of contracts, forms, rates and fees.

1 (a) It shall be the duty of the commissioner to enforce
2 the provisions of this article.

3 (b) No such corporation shall deliver or issue for
4 delivery any subscriber's contract, changes in the terms
5 of such contract, application, rider or endorsement, until
6 a copy thereof and the rates pertaining thereto have
7 been filed with and approved by the commissioner. All
8 such forms filed with the commissioner shall be deemed
9 approved after the expiration of sixty days from the date
10 of such filing unless the commissioner shall have
11 disapproved the same, stating his reasons for such
12 disapproval in writing. Such forms may be used prior
13 to the expiration of such periods if written approval
14 thereof has been received from the commissioner.

15 (c) No rates to be charged subscribers shall be used
16 or established by any such corporation unless and until
17 the same have been filed with the commissioner and
18 approved by him. The procedure for such filing and
19 approval shall be the same as that prescribed in
20 subsection (b) of this section for the approval of forms.
21 The commissioner shall approve all such rates which are
22 not excessive, inadequate or unfairly discriminatory.

23 (d) The commissioner shall pass upon the actuarial
24 soundness of the schedule of fees to be paid hospitals,
25 physicians, dentists and other health agencies.

ARTICLE 25. HEALTH CARE CORPORATIONS.

***§33-25-8. Commissioner to enforce article; approval of contracts, forms and rates; reserve fund; membership fee.**

1 (a) It shall be the duty of the commissioner to enforce
2 the provisions of this article.

3 (b) No such corporation shall deliver or issue for
4 delivery any subscriber's contract, changes in the terms
5 of such contract, application, rider or endorsement until

*Clerk's Note: This section was also amended by H. B. 2588, which passed subsequent to this act.

6 a copy thereof and the rates pertaining thereto have
7 been filed with and approved by the commissioner. All
8 such forms filed with the commissioner shall be deemed
9 approved after the expiration of sixty days from the date
10 of such filing unless the commissioner shall have
11 disapproved the same, stating his reasons for such
12 disapproval in writing. Such forms may be used prior
13 to the expiration of such periods if written approval
14 thereof has been received from the commissioner.

15 (c) No rates to be charged subscribers shall be used
16 or established by any such corporation unless and until
17 the same have been filed with the commissioner and
18 approved by him. The procedure for such filing and
19 approval shall be the same as that prescribed in
20 subsection (b) of this section for the approval of forms.
21 The commissioner shall approve all such rates which are
22 not excessive, inadequate, or unfairly discriminatory.

23 (d) The commissioner shall pass upon the actuarial
24 soundness of all direct health care services plans.

25 (e) The corporation shall accumulate a fund to be
26 derived from a minimum of two percent of every
27 subscriber's monthly premium which shall be known as
28 a contingency and liability reserve fund except that the
29 same shall not exceed an amount equal to three months'
30 average obligation of said corporation, nor shall it fall
31 below a minimum of one month's average obligation of
32 said corporation. Said fund shall be expended by the
33 corporation according to rules and regulations to be
34 promulgated by the commissioner.

35 In addition to the above requirements, every sub-
36 scriber shall pay into the corporation a membership fee
37 equal to one monthly premium. The membership fee
38 shall be collected in full by said corporation within
39 ninety days of said subscriber's application for
40 membership.

41 (f) Each such rate filing and each such form filing
42 made with the commissioner pursuant to this section is
43 subject to the filing fee of section thirty-four, article six
44 of this chapter.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8. Evidence of coverage; charges for health care services; cancellation of contract by enrollee.

1 (1) (a) Every enrollee is entitled to evidence of
2 coverage in accordance with this section. The health
3 maintenance organization or its designated representa-
4 tive shall issue the evidence of coverage.

5 (b) No evidence of coverage, or amendment thereto,
6 shall be issued or delivered to any person in this state
7 until a copy of the form of the evidence of coverage, or
8 amendment thereto, has been filed with and approved
9 by the commissioner.

10 (c) An evidence of coverage shall contain a clear,
11 concise and complete statement of (i) the health care
12 services and the insurance or other benefits, if any, to
13 which the enrollee is entitled; (ii) any exclusions or
14 limitations on the services, kind of services, benefits, or
15 kind of benefits, to be provided, including any copay-
16 ments; (iii) where and in what manner information is
17 available as to how services, including emergency and
18 out-of-area services, may be obtained; (iv) the total
19 amount of payment and copayment, if any, for health
20 care services and the indemnity or service benefits, if
21 any, which the enrollee is obligated to pay with respect
22 to individual contracts, or an indication whether the
23 plan is contributory or noncontributory with respect to
24 group certificates; and (v) a description of the health
25 maintenance organization's method for resolving enrol-
26 lee complaints.

27 (d) Any subsequent approved change in an evidence
28 of coverage shall be issued to each enrollee.

29 (e) A copy of the form of the evidence of coverage to
30 be used in this state, and any amendment thereto, shall
31 be subject to the filing and approval requirements of
32 subdivision (b), subsection (1) of this section, unless the
33 commissioner promulgates a regulation dispensing with
34 this requirement or unless it is subject to the jurisdiction
35 of the commissioner under the laws governing health

36 insurance or, hospital or medical service corporations,
37 in which event the filing and approval provisions of such
38 laws shall apply. To the extent, however, that such
39 provisions do not apply, the requirements in subdivision
40 (c), subsection (1) of this section shall be applicable.

41 (2) Such charges may be established in accordance
42 with actuarial principles: *Provided*, That premiums
43 shall not be excessive, inadequate, or unfairly discrim-
44 inatory. A certification by a qualified actuary, to the
45 appropriateness of the charges based on reasonable
46 assumptions shall accompany the filing along with
47 adequate supporting information. In determining
48 whether such charges are reasonable, the commissioner
49 shall consider whether such health maintenance organ-
50 ization has (a) made a vigorous, good faith effort to
51 control rates paid to health care providers; (b) estab-
52 lished a premium schedule, including copayments, if
53 any, which encourages enrollees to seek out preventive
54 health care services; and (c) has made a good faith effort
55 to secure arrangements whereby basic services can be
56 obtained by subscribers from all local providers to the
57 extent that such providers offer such services.

58 (3) The commissioner shall within a reasonable period
59 approve any form if the requirements of subsection (1)
60 are met and any schedule of charges if the requirements
61 of subsection (2) are met. It shall be unlawful to issue
62 such form or to use such schedule of charges until
63 approved. If the commissioner disapproves of such
64 filing, he shall notify the filer promptly. In the notice,
65 the commissioner shall specify the reasons for his
66 disapproval and the findings of fact and conclusions
67 which support his reasons. A hearing will be granted
68 by the commissioner within fifteen days after a request
69 in writing, by the person filing, has been received by
70 the commission. If the commissioner does not disapprove
71 any form or schedule of charges within sixty days of the
72 filing of such forms or charges, they shall be deemed
73 approved.

74 (4) The commissioner may require the submission of
75 whatever relevant information in addition to the
76 schedule of charges which he deems necessary in

77 determining whether to approve or disapprove a filing
78 made pursuant to this section.

79 (5) An enrollee shall be allowed to cancel a contract
80 with a health maintenance organization at any time for
81 any reason provided that a health maintenance organ-
82 ization may require that he or she give sixty days notice
83 of disenrollment to such organization.

CHAPTER 97

(H. B. 2588—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-four, article six; sections two and sixteen, article twenty-two; section two, article twenty-three; section four, article twenty-four; section eight, article twenty-five; section twenty-two, article twenty-five-a; section six, article thirty-one; and section three, article thirty-two, all of chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article twenty-five by adding thereto a new section, designated section eighteen; to further amend said article twenty-five-a by adding thereto a new section, designated section twenty-nine; and to further amend said chapter thirty-three by adding thereto a new article, designated article thirty-three, all relating to domestic insurers, and requiring annual examinations by independent certified public accountants; increasing fees on rate and form filings; requiring farmers mutual fire insurance companies to pay form filing fees with annual reports; and subjecting certain other corporations and organizations to the rate and form filing fees.

Be it enacted by the Legislature of West Virginia:

That section thirty-four, article six; sections two and sixteen, article twenty-two; section two, article twenty-three; section four, article twenty-four; section eight, article twenty-five; section twenty-two, article twenty-five-a; section six, article

thirty-one; and section three, article thirty-two, all of chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article twenty-five be further amended by adding thereto a new section, designated section eighteen; that said article twenty-five-a be further amended by adding thereto a new section, designated section twenty-nine; and that said chapter thirty-three be further amended by adding thereto a new article, designated article thirty-three, all to read as follows:

CHAPTER 33. INSURANCE.

Article

6. The Insurance Policy.
22. Farmers' Mutual Fire Insurance Companies.
23. Fraternal Benefit Societies.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.
31. Captive Insurance.
32. Risk Retention Act.
33. Annual Audited Financial Report.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-34. Fee for form and rate filing.

1 A fee of twenty-five dollars for every form filing and
2 twenty-five dollars for every rate filing shall be
3 submitted with each filing. If a form filing or rate filing
4 is made on behalf of more than one insurer, other than
5 a filing made by a rating organization licensed by the
6 commissioner pursuant to section six, article twenty of
7 this chapter, the fee shall be submitted as if the filing
8 were made by each individual insurer. Fees submitted
9 pursuant to this section shall not be refunded if the form
10 filing or rate filing, for which the fee was submitted,
11 is disapproved in whole or in part by the commissioner.
12 The refiling of a form filing or rate filing previously
13 disapproved by the commissioner shall be considered a
14 new filing for the purposes of the filing fee: *Provided,*
15 That any request by the commissioner for additional
16 information pertaining to a form filing shall not be
17 considered a new filing for purposes of the filing fee. All
18 fees collected pursuant to this section shall be used by

19 the commissioner for the operation of the department of
20 insurance.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

§33-22-2. Other provisions of chapter applicable.

§33-22-16. Fees.

§33-22-2. Other provisions of chapter applicable.

1 Each such company to the same extent such provisions
2 are applicable to domestic mutual insurers shall be
3 governed by and be subject to the following articles of
4 this chapter: Article one (definitions), article two
5 (insurance commissioner), article four (general provi-
6 sions) except that section sixteen of article four shall not
7 be applicable thereto, article ten (rehabilitation and
8 liquidation) except that under the provisions of section
9 thirty-two of said article ten no assessment shall be
10 levied against any former member of a farmers' mutual
11 fire insurance company who is no longer a member of
12 the company at the time the order to show cause was
13 issued, article eleven (unfair practices and frauds),
14 article twelve (agents, brokers and solicitors) except
15 that the agents' license fee shall be five dollars, article
16 twenty-six (West Virginia Insurance Guaranty Associ-
17 ation Act), article thirty (mine subsidence insu-
18 rance) except that under the provisions of section six,
19 article thirty, a farmers' mutual insurance company
20 shall have the option of offering mine subsidence
21 coverage to all of its policyholders but shall not be
22 required to do so, and article thirty-three (annual
23 audited financial report); but only to the extent these
24 provisions are not inconsistent with the provisions of this
25 article.

§33-22-16. Fees.

1 Such company at the time of making its annual report
2 shall pay to the commissioner a filing fee of twenty-five
3 dollars, all fees so collected to be used for the purposes
4 specified in section thirteen, article three of this chapter.
5 No other fees or taxes shall be levied against such
6 companies except the agent's license fee, the form filing
7 fee required by the provisions of section thirty-four,

8 article six of this chapter and the expenses of examina-
9 tion thereof by the commissioner.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

***§33-23-2. Other provisions of chapter applicable.**

1 Every fraternal benefit society shall be governed and
2 be subject, to the same extent as other insurers
3 transacting like kinds of insurance, to the following
4 articles of this chapter: Article one (definitions), article
5 two (insurance commissioner), article four (general
6 provisions), article six, section thirty (fee for form and
7 rate filing), article ten (rehabilitation and liquidation),
8 article eleven (unfair trade practices), article twelve
9 (agents, brokers, solicitors and excess lines), article
10 thirteen (life insurance), article fifteen-a (long-term care
11 insurance), and article thirty-three (annual audited
12 financial report).

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE
CORPORATIONS.**

****§33-24-4. Exemptions; applicability of other laws.**

1 Every such corporation is hereby declared to be a
2 scientific, nonprofit institution and as such exempt from
3 the payment of all property and other taxes. Every such
4 corporation, to the same extent such provisions are
5 applicable to insurers transacting similar kinds of
6 insurance and not inconsistent with the provisions of this
7 article, shall be governed by and be subject to the
8 provisions as hereinbelow indicated, of the following
9 articles of this chapter: Article two (insurance commis-
10 sioner) except that under section nine of article two
11 examinations shall be conducted at least once every four
12 years, article four (general provisions) except that
13 section sixteen of article four shall not be applicable
14 thereto, article six, section thirty-four (fee for form and
15 rate filing), article ten (rehabilitation and liquidation),

*** Clerk's Notes:** This section was also amended by H. B. 2526 and H. B. 2286, which passed prior to this act.

****** This section was also amended by S. B. 252 and H. B. 2526, which passed prior to this act.

16 article eleven (unfair practices and frauds), article
17 twelve (agents, brokers and solicitors) except that the
18 agent's license fee shall be five dollars, article fifteen-
19 a (long-term care insurance), section three-c, article
20 sixteen (group accident and sickness insurance), section
21 three-d, article sixteen (medicare supplement), section
22 three-f, article sixteen (treatment of temporomandibular
23 joint disorder and craniomandibular disorder), article
24 twenty-eight (individual accident and sickness insurance
25 minimum standards) and article thirty-three (annual
26 audited financial report); and no other provision of this
27 chapter shall apply to such corporations unless specif-
28 ically made applicable by the provisions of this article.
29 If, however, any such corporation shall be converted into
30 a corporation organized for a pecuniary profit, or if it
31 shall transact business without having obtained a license
32 as required by section five of this article, it shall
33 thereupon forfeit its right to these exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8. Commissioner to enforce article; approval of contracts, forms and rates; reserve fund; membership fee.

§33-25-18. Annual audited financial report.

***§33-25-8. Commissioner to enforce article; approval of contracts, forms and rates; reserve fund; membership fee.**

1 (a) It shall be the duty of the commissioner to enforce
2 the provisions of this article.

3 (b) No such corporation shall deliver or issue for
4 delivery any subscriber's contract, changes in the terms
5 of such contract, application, rider or endorsement until
6 a copy thereof and the rates pertaining thereto have
7 been filed with and approved by the commissioner. All
8 such forms filed with the commissioner shall be deemed
9 approved after the expiration of thirty days from the
10 date of such filing unless the commissioner shall have
11 disapproved the same, stating his reasons for such
12 disapproval in writing, except that such period may be
13 extended for an additional period not to exceed fifteen
14 days upon written notice thereof from the commissioner
15 to the applicant. Such forms may be used prior to the

***Clerk's Note:** This section was also amended by H. B. 2417, which passed prior to this act.

16 expiration of such periods if written approval thereof
17 has been received from the commissioner.

18 (c) No rates to be charged subscribers shall be used
19 or established by any such corporation unless and until
20 the same have been filed with the commissioner and
21 approved by him. The procedure for such filing and
22 approval shall be the same as that prescribed in
23 subsection (b) of this section for the approval of forms.
24 The commissioner shall approve all such rates which are
25 not excessive, inadequate, or unfairly discriminatory.

26 (d) The commissioner shall pass upon the actuarial
27 soundness of all direct health care services plans.

28 (e) The corporation shall accumulate a fund to be
29 derived from a minimum of two percent of every
30 subscriber's monthly premium which shall be known as
31 a contingency and liability reserve fund except that the
32 same shall not exceed an amount equal to three months'
33 average obligation of said corporation, nor shall it fall
34 below a minimum of one month's average obligation of
35 said corporation. Said fund shall be expended by the
36 corporation according to rules and regulations to be
37 promulgated by the commissioner.

38 In addition to the above requirements, every subscriber
39 shall pay into the corporation a membership fee equal to
40 one monthly premium. The membership fee shall be
41 collected in full by said corporation within ninety days
42 of said subscriber's application for membership.

43 (f) Each such rate filing and each such form filing
44 made with the commissioner pursuant to this section is
45 subject to the filing fee of section thirty-four, article six
46 of this chapter.

§33-25-18. Annual audited financial report.

1 Every health care organization organized under the
2 laws of this state is subject to the provisions of article
3 thirty-three of this chapter.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-22. Fees.

§33-25A-29. Annual audited financial report.

§33-25A-22. Fees.

1 Every health maintenance organization subject to this
2 article shall pay to the commissioner the following fees:
3 For filing an application for a certificate of authority
4 or amendment thereto, two hundred dollars; for each
5 form filing and for each rate filing, the fee as provided
6 in section thirty-four, article six of this chapter; and for
7 filing each annual report, twenty-five dollars. Fees
8 charged under this section shall be for the purposes set
9 forth in section thirteen, article three of this chapter.

§33-25A-29. Annual audited financial report.

1 Every health maintenance organization organized
2 under the laws of this state is subject to the provisions
3 of article thirty-three of this chapter.

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-6. Formation of captive insurance companies in this state.

1 (a) A pure captive insurance company shall be
2 incorporated as a stock insurer with its capital divided
3 into shares and held by the stockholders.

4 (b) An association captive insurance company or an
5 industrial insured captive insurance company may be
6 incorporated:

7 (1) As a stock insurer with its capital divided into
8 shares and held by the stockholders; or

9 (2) As a mutual insurer without capital stock, the
10 governing body of which is elected by the member
11 organizations of its association.

12 (c) A captive insurance company shall have at least
13 one incorporator who shall be a resident of this state.

14 (d) Before the articles of association are transmitted
15 to the secretary of state, the incorporators shall petition
16 the commissioner to issue a certificate setting forth his
17 finding that the establishment and maintenance of the
18 proposed corporation will promote the general good of

19 the state. In arriving at such finding the commissioner
20 shall consider:

21 (1) The character, reputation, financial standing and
22 purpose of the incorporators;

23 (2) The character, reputation, financial responsibility,
24 insurance experience and business qualifications of the
25 officers and directors; and

26 (3) Such other aspects as the commissioner shall deem
27 advisable.

28 (e) The articles of association, such certificate and the
29 organization fee shall be transmitted to the secretary of
30 state, who shall thereupon record both the articles of
31 incorporation and the certificate.

32 (f) The capital stock of a captive insurance company
33 incorporated as a stock insurer shall be issued at not less
34 than par value.

35 (g) At least one of the members of the board of
36 directors of a captive insurance company incorporated
37 in this state shall be a resident of this state.

38 (h) Captive insurance companies formed under the
39 provisions of this chapter shall have the privileges and
40 be subject to the provisions of the general corporation
41 law as well as the applicable provisions contained in this
42 chapter. Captive insurance companies are subject to the
43 provisions of article thirty-three of this chapter. In the
44 event of conflict between the provisions of said general
45 corporation law and the provisions of this chapter, the
46 latter shall control.

ARTICLE 32. RISK RETENTION ACT.

§33-32-3. Risk retention groups chartered in this state.

1 A risk retention group seeking to be chartered in this
2 state must be chartered and licensed as a liability
3 insurance company authorized by the insurance laws of
4 this state and, except as provided elsewhere in this
5 article, must comply with all of the laws, rules,
6 regulations and requirements applicable to such insur-
7 ers chartered and licensed in this state and with section

8 four of this article to the extent such requirements are
9 not a limitation on laws, rules, regulations or require-
10 ments of this state. Risk retention groups are subject to
11 the provisions of article thirty-three of this chapter.
12 Before it may offer insurance in any state, each risk
13 retention group shall also submit for approval to the
14 insurance commissioner of this state a plan of operation
15 or a feasibility study and revisions of such plan or study
16 if the group intends to offer any additional lines of
17 liability insurance.

ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

- §33-33-1. Declaration of policy and purpose.
- §33-33-2. Definitions.
- §33-33-3. Filing and extensions for filing of annual audited financial reports.
- §33-33-4. Contents of annual audited financial report.
- §33-33-5. Designation of independent certified public accountant.
- §33-33-6. Qualifications of independent certified public accountant.
- §33-33-7. Consolidated or combined audits.
- §33-33-8. Scope of examination and report of independent certified public accountant.
- §33-33-9. Notification of adverse financial conditions.
- §33-33-10. Evaluation of accounting procedures and system of internal control.
- §33-33-11. Definition, availability and maintenance of certified public accountant (CPA) workpapers.
- §33-33-12. Examinations.
- §33-33-13. Exemptions from compliance.

§33-33-1. Declaration of policy and purpose.

1 The purpose of this article is to improve the insurance
2 commissioner's surveillance of the financial condition of
3 domestic insurers by requiring an annual examination
4 by independent certified public accountants of the
5 financial statements reporting the financial condition
6 and the results of operations of insurers.

7 This article shall not prohibit or preclude or in any
8 way limit the commissioner from performing examina-
9 tions of insurers as specified in section nine, article two
10 of this chapter or such other examinations as the
11 commissioner may be authorized to perform by this
12 chapter.

§33-33-2. Definitions.

1 (a) "Accountant," "certified public accountant (CPA)"
2 and "independent public accountant" means an inde-
3 pendent certified public accountant or accounting firm
4 who has a license to practice issued by the state in which
5 he resides or has his principal place of business.

6 (b) "Annual statement" means the annual financial
7 statement required to be filed by insurers with the
8 commissioner pursuant to the provisions of this chapter.

9 (c) "Audited financial report" means and includes
10 those items specified in section four of this article.

11 (d) "Insurer" for purposes of this article means any
12 domestic insurer as defined in section six, article one of
13 this chapter, and includes any domestic stock insurance
14 company, mutual insurance company, reciprocal insu-
15 rance company, farmers' mutual fire insurance com-
16 pany, fraternal benefit society, hospital service corpora-
17 tion, medical service corporation, health care corpora-
18 tion, health maintenance organization, captive insurance
19 company or risk retention group.

§33-33-3. Filing and extensions for filing of annual audited financial reports.

1 (a) Annual audited financial reports must be filed by
2 all insurers with the commissioner on or before the first
3 day of June for the year ending the thirty-first day of
4 December immediately preceding.

5 (b) Extensions of the filing date on the first day of
6 June may be granted by the commissioner for thirty-day
7 periods upon showing by the insurer and its independent
8 certified public accountant the reasons for requesting
9 such extension and determination by the commissioner
10 of good cause for an extension. A request for extension
11 must be submitted in writing not less than ten days
12 prior to the due date in sufficient detail to permit the
13 commissioner to make an informed decision with respect
14 to the requested extension.

§33-33-4. Contents of annual audited financial report.

1 (a) The annual audited financial report shall report
2 the financial condition of the insurer as of the end of the

3 most recent calendar year and the results of its
4 operations, changes in financial position and changes in
5 capital and surplus for the year then ended in confor-
6 mity with statutory accounting practices for preparation
7 of the annual statement or as otherwise permitted by the
8 commissioner.

9 (b) The annual audited financial report shall include
10 the following:

11 (1) Report of independent certified public accountant;

12 (2) Balance sheet reporting admitted assets, liabili-
13 ties, capital and surplus;

14 (3) Statement of gain or loss from operations or
15 statement of revenue and expenses;

16 (4) Statement of changes in financial position or cash
17 flow statement;

18 (5) Statement of changes in capital and surplus;

19 (6) Notes to financial statements. These notes shall be
20 those required by generally accepted accounting prin-
21 ciples and shall include a reconciliation of differences,
22 if any, between the audited statutory financial state-
23 ments and the annual statement with a written descrip-
24 tion of the nature of these differences;

25 (7) The financial statements included in the audited
26 financial report shall be prepared in a form and using
27 language and groupings substantially the same as the
28 relevant sections of the annual statement of the insurer
29 filed with the commissioner; and:

30 (A) The financial statement shall be comparative,
31 presenting the amounts as of the thirty-first day of
32 December of the current year and the amounts as of the
33 immediately preceding thirty-first day of December.
34 (However, in the first year in which an insurer is
35 required to file an audited financial report, the compar-
36 ative data may be omitted);

37 (B) Amounts may be rounded to the nearest thousand
38 dollars;

39 (8) Supplementary data and information. This shall

40 include any additional clarifying information or data
41 which the commissioner may require to be disclosed.

§33-33-5. Designation of independent certified public accountant.

1 (a) Each insurer required by this article to file an
2 annual audited financial report must, within sixty days
3 after becoming subject to such requirements, register
4 with the commissioner in writing the name and address
5 of the certified public accountant or accounting firm
6 (generally referred to in this article as the "account-
7 tant") retained to conduct the annual audit set forth in
8 this article.

9 (b) The insurer shall obtain a letter from such
10 accountant, and file a copy with the commissioner
11 stating that the accountant is aware of the provisions of
12 this code and rules that relate to accounting and
13 financial matters and affirming that he will express his
14 opinion on the financial statements in terms of their
15 conformity to the statutory accounting practices pres-
16 cribed or otherwise permitted by the commissioner
17 specifying such exceptions as he may believe
18 appropriate.

19 (c) If an accountant who was not the accountant for
20 the immediately preceding filed audited financial report
21 is engaged to audit the insurer's financial statements,
22 the insurer shall within thirty days of the date the
23 accountant is engaged notify the commissioner of this
24 event. The insurer shall also furnish the commissioner
25 with a separate letter stating whether in the twenty-four
26 months preceding such engagement there were any
27 disagreements with the former accountant on any
28 matter of accounting principles or practices, financial
29 statement disclosure, or auditing scope or procedure,
30 which disagreements, if not resolved to the satisfaction
31 of the former accountant, would have caused him to
32 make reference to the subject matter of the disagree-
33 ment in connection with his opinion. The insurer shall
34 also in writing request such former accountant to
35 furnish it a letter addressed to the insurer stating
36 whether the accountant agrees with the statements

37 contained in the insurer's letter and, if not, stating the
38 reasons for which he does not agree; and the insurer
39 shall furnish such responsive letter from the former
40 accountant to the commissioner together with its own.

§33-33-6. Qualifications of independent certified public accountant.

1 (a) The commissioner shall not recognize any person
2 as an independent certified public accountant who does
3 not meet the requirements for the definition of "account-
4 tant" under section two of this article.

5 (b) The commissioner may hold a hearing to deter-
6 mine whether a certified public accountant is independ-
7 ent and considering the evidence presented, may rule
8 that the accountant is not independent for purposes of
9 expressing his opinion on the financial statements in the
10 audited financial report made pursuant to this article
11 and require the insurer to replace the accountant with
12 another whose relationship with the insurer is independ-
13 ent within the meaning of this article.

§33-33-7. Consolidated or combined audits.

1 (a) The commissioner may, upon written application,
2 permit any insurer that is a member of an insurance
3 holding company system to file audited, consolidated or
4 combined financial statements in lieu of separate annual
5 audited financial statements if the commissioner, in his
6 discretion, deems such method of filing reasonable and
7 appropriate. Consolidated or combined filings will be
8 considered reasonable and appropriate if the commis-
9 sioner determines that the audit work performed under
10 a consolidated filing is adequate to ascertain the
11 financial condition of the insurer. If such approval is
12 granted, a columnar consolidating or combining work-
13 sheet shall be filed with the report incorporating the
14 following:

15 (1) Amounts shown on the consolidated or combined
16 audited financial report shall be shown on the
17 worksheet;

18 (2) Amounts for each insurer subject to this section
19 shall be stated separately;

20 (3) Noninsurance operations may be shown on the
21 worksheet on a combined or individual basis;

22 (4) Explanations of consolidating and eliminating
23 entries shall be included; and

24 (5) A reconciliation shall be included of any differen-
25 ces between the amounts shown in the individual insurer
26 columns of the worksheet and comparable amounts
27 shown on the annual statements of the insurers.

28 (b) The commissioner shall require any insurer to file
29 separate annual audited financial statements although
30 permission had previously been given to file on a
31 consolidated basis or combined basis if the commissioner
32 determines the reasons or circumstances given for
33 approval of the consolidated audit, pursuant to subsec-
34 tion (a) of this section, no longer exist.

**§33-33-8. Scope of examination and report of independ-
ent certified public accountant.**

1 The examination of the insurer's financial statements
2 by the independent certified public accountant shall be
3 conducted in accordance with generally accepted
4 auditing standards and such other procedures illus-
5 trated in the examiners' handbook promulgated by the
6 national association of insurance commissioners as the
7 independent certified public accountant deems neces-
8 sary. The commissioner may from time to time pre-
9 scribe that additional auditing procedures be observed by
10 the accountant in the examination of the financial
11 statements of insurers pursuant to this article.

§33-33-9. Notification of adverse financial conditions.

1 The independent certified public accountant shall
2 immediately notify, in writing, an officer or director of
3 the insurer and the commissioner of any determination
4 by the independent certified public accountant that the
5 insurer has materially misstated its financial condition
6 as reported to the commissioner as of the thirty-first day
7 of December immediately preceding, or of any determi-
8 nation that the insurer does not meet the applicable
9 minimum capital and surplus requirement of this
10 chapter or in the case of an insurer not subject to capital
11 and surplus requirement, that the surplus of the insurer

12 is less than one hundred thousand dollars as of the
13 thirty-first day of December immediately preceding.
14 For purposes of this article, material misstatement shall
15 mean a misstatement that overstates the surplus as
16 regards policyholders in single financial statement
17 items by five percent or more, or when taken together
18 with all financial statement items, the surplus as
19 regards policyholders is overstated by ten percent or
20 more.

**§33-33-10. Evaluation of accounting procedures and
system of internal control.**

1 (a) In addition to the annual audited financial reports,
2 each insurer shall furnish the commissioner with a
3 report of evaluation performed by the accountant, in
4 connection with his examination, of the accounting
5 procedures of the insurer and its system of internal
6 control.

7 (b) A report of the evaluation by the accountant of the
8 accounting procedures of the insurer and its system of
9 internal control, including any remedial action taken or
10 proposed, shall be filed annually by the insurer with the
11 commissioner at the time of filing of the annual audited
12 financial report.

13 (c) This report shall follow generally the form for
14 reports on internal control based on audits as prescribed
15 in the then current volume of the professional standards
16 of the American institute of certified public accountants.

**§33-33-11. Definition, availability and maintenance of
certified public accountant (CPA)
workpapers.**

1 (a) Workpapers shall be kept by the independent
2 certified public accountant of the procedures followed,
3 the tests performed, the information obtained and the
4 conclusions reached pertinent to this examination of the
5 financial statements of an insurer. Workpapers shall
6 include work programs, analyses, memoranda, letters of
7 conformation and representation, abstracts of company
8 documents and schedules or commentaries prepared or
9 obtained by the independent certified public accountant
10 in the course of his examination of the financial

11 statements of an insurer and which support his opinion
12 thereon.

13 (b) Every insurer required to file an audited financial
14 report pursuant to this article shall require the account-
15 tant to make available for review by the commissioner
16 the workpapers prepared in the conduct of his exami-
17 nation. The insurer shall require that the accountant
18 retain the audit workpapers for a period of not less than
19 five years after the period reported thereon.

20 (c) In the conduct of the aforementioned periodic
21 review by the commissioner, it shall be agreed that
22 photocopies of pertinent audit workpapers may be made
23 and retained by the commissioner.

§33-33-12. Examinations.

1 Examinations of insurers conducted by the commis-
2 sioner pursuant to section nine, article two of this
3 chapter may, at the discretion of the commissioner,
4 include and be supplemented by audit procedures
5 performed by an independent certified public account-
6 tant as herein provided.

§33-33-13. Exemptions from compliance.

1 Upon written application by an insurer, the commis-
2 sioner may grant an exemption from compliance with
3 this article if the commissioner finds, upon review of the
4 application, that compliance with this article would
5 constitute a financial or organizational hardship upon
6 the insurer. An exemption may be granted at any time
7 and from time to time for a specified period or periods.
8 Within ten days of a denial of an insurer's written
9 request for an exemption from this article, such insurer
10 may request in writing a hearing on its application for
11 an exemption.

CHAPTER 98

**(Com. Sub. for S. B. 264—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)**

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code West

Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-b, relating to providing a mechanism to regulate the declination of automobile liability policies.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article six-b, to read as follows:

ARTICLE 6B. DECLINATION OF AUTOMOBILE LIABILITY INSURANCE.

§33-6B-1. Purpose of article.

§33-6B-2. Definitions.

§33-6B-3. Declinations; prohibited reasons.

§33-6B-4. Notification.

§33-6B-5. Hearings and administrative procedure.

§33-6B-6. Sanctions.

§33-6B-7. Severability.

§33-6B-1. Purpose of article.

- 1 The purpose of this article is to regulate the declina-
- 2 tion of automobile liability policies.

§33-6B-2. Definitions.

- 1 "Declination" means either the refusal of an insurer
- 2 to issue an automobile liability insurance policy upon
- 3 receipt of a written nonbinding application or written
- 4 request for coverage from its agent or an applicant. For
- 5 the purposes of this article, the offering of insurance
- 6 coverage with a company within an insurance group
- 7 which is different from the company requested on the
- 8 nonbinding application or written request for coverage,
- 9 or the offering of policy coverage or rates substantially
- 10 less favorable than requested in the nonbinding appli-
- 11 cation or written request for coverage, shall not be
- 12 considered a declination. Further, for the purposes of
- 13 this article "declination" shall include the cancellation
- 14 of an automobile liability policy which has been in effect
- 15 less than sixty days and the nonrenewal of an automo-
- 16 bile liability policy which has been in effect less than
- 17 two years.

§33-6B-3. Declinations; prohibited reasons.

1 The declination of an application for a policy of
2 automobile liability insurance by an insurer, agent or
3 broker is prohibited if the declination is:

4 (a) Based upon the race, religion, nationality, or
5 ethnic group, of the applicant or named insured;

6 (b) Based solely upon the lawful occupation or
7 profession of the applicant or named insured, unless
8 such decision is for a business purpose which is not a
9 mere pretext for unfair discrimination: *Provided*, That
10 this provision shall not apply to any insurer, agent or
11 broker which limits its market to one lawful occupation
12 or profession or to several related lawful occupations or
13 professions;

14 (c) Based upon the principal location of the insured
15 motor vehicle unless such decision is for a business
16 purpose which is not a mere pretext for unfair
17 discrimination;

18 (d) Based solely upon the age, sex or marital status
19 of an applicant or an insured, except that this subsection
20 shall not prohibit rating differentials based on age, sex
21 or marital status;

22 (e) Based upon the fact that the applicant has
23 previously obtained insurance coverage with a substand-
24 ard insurance carrier;

25 (f) Based upon the fact that the applicant has not
26 previously been insured;

27 (g) Based upon the fact that the applicant did not
28 have insurance coverage for a period of time prior to the
29 application;

30 (h) Based upon the fact that the applicant or named
31 insured previously obtained insurance coverage through
32 a residual market insurance mechanism;

33 (i) Based upon the fact that another insurer pre-
34 viously declined to insure the applicant or terminated
35 an existing policy in which the applicant was the named
36 insured.

37 Nothing in this section shall be construed as prohib-
38 iting an insurer, agent, or broker from using legitimate,
39 documented, underwriting data in making their own
40 independent risk assessment of an applicant for insu-
41 rance.

§33-6B-4. Notification.

1 In the event of a declination, the insurer shall, within
2 thirty days of the receipt of the written nonbinding
3 application or written request for coverage, provide the
4 applicant reasons for such declination.

§33-6B-5. Hearings and administrative procedure.

1 Hearings for the violation of any provision of this
2 article, and the administrative procedure prior to,
3 during, and following these hearings, shall be conducted
4 in accordance with the provisions of article two of this
5 chapter.

§33-6B-6. Sanctions.

1 If the commissioner determines in a final order that:

2 (a) An insurer has violated section three or four of this
3 article, he may require the insurer to:

4 (1) Accept the application or written request for
5 insurance coverage at a rate and on the same terms and
6 conditions as are available to its other risks with similar
7 characteristics; or

8 (2) Reinstate insurance coverage to the end of the
9 policy period; or

10 (3) Continue insurance coverage at a rate and on the
11 same terms and conditions as are available to its other
12 risks with similar characteristics.

13 (b) Any person has violated any provision of this
14 article, he may:

15 (1) Issue a cease and desist order to restrain the
16 person from engaging in practices which violate this
17 article;

18 (2) Assess a penalty against the person of up to five

19 thousand dollars for each willful and knowing violation
20 of this article.

§33-6B-7. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is for any reason
3 held to be invalid, the remainder of the article and the
4 application of such provision to other persons or
5 circumstances shall not be affected thereby.

CHAPTER 99

(S. B. 440—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-five, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article twelve by adding thereto a new section, designated section twenty-five-a, all relating to insurance; agents, brokers, solicitors and excess line; revocation, suspension or refusal to renew license; civil penalty; and notice of termination to represent insurer.

Be it enacted by the Legislature of West Virginia:

That section twenty-five, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twenty-five-a, all to read as follows:

**ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS
LINE.**

§33-12-25. Revocation, suspension or refusal to renew license; penalty in lieu thereof.

§33-12-25a. Termination of authority to represent insurer.

§33-12-25. **Revocation, suspension or refusal to renew
license; penalty in lieu thereof.**

1 (a) The commissioner may revoke or suspend the

2 license of any agent, solicitor, broker or excess line
3 broker if, after notice to the licensed person and
4 hearing, the commissioner determines such person has:

5 (1) Violated any insurance law or any lawful rule,
6 regulation, or order of the commissioner;

7 (2) Improperly withheld, misappropriated, or con-
8 verted to his own use any money received in the course
9 of business and belonging to policyholders, insurers,
10 beneficiaries, or others;

11 (3) Misrepresented the terms of any existing or
12 proposed insurance contract to the detriment of the
13 applicant or insured;

14 (4) Engaged in any pattern of unfair method of
15 competition or unfair or deceptive acts or practices in
16 the business of insurance as defined in article eleven of
17 this chapter;

18 (5) Forged another person's name to an application
19 for insurance or to any other document or fraudulently
20 procured a forged signature to an insurance application
21 or any other document, knowing such signature to be
22 forged;

23 (6) Knowingly and willfully made or permitted a false
24 or fraudulent statement or misrepresentation in or
25 relative to an application for a policy of insurance;

26 (7) Been convicted of or pleaded nolo contendere to any
27 felony;

28 (8) Been convicted of or pleaded nolo contendere to a
29 misdemeanor in connection with his activities as an
30 agent, solicitor, broker or excess line broker;

31 (9) Obtained the license for the purpose of writing
32 controlled business, as described in subsection (d),
33 section two, article twelve of this chapter;

34 (10) Had an agent's or broker's license suspended or
35 revoked in any other state, district, or territory of the
36 United States or any province of Canada;

37 (11) Not demonstrated trustworthiness and compet-

38 ency in his activities as an agent, solicitor, broker or
39 excess line broker; or

40 (12) Obtained the license through misrepresentation,
41 fraud, or any other act for which issuance of the license
42 could have been refused had it been known to the
43 commissioner at the time of issuance.

44 (b) In lieu of revoking or suspending such license, the
45 commissioner may in his discretion order such licensee
46 to pay to the state of West Virginia a penalty in a sum
47 not to exceed one thousand dollars and upon the failure
48 of such licensee to pay such penalty by delivery of such
49 sum to the commissioner within thirty days of notice
50 thereof, the commissioner shall revoke or suspend such
51 license.

§33-12-25a. Termination of authority to represent insurer.

1 (a) An insurer shall give to the commissioner and the
2 agent, on a form prescribed by the commissioner,
3 written notice of the termination of an agent's authority
4 to represent the insurer within five working days of the
5 termination. The notice of termination shall state the
6 cause and circumstances of such termination.

7 (b) In the absence of fraud or bad faith, there shall
8 be no liability on the part of, and a cause of action of
9 any nature shall not arise against the commissioner or
10 his employees, or an insurer or its employees for any
11 information furnished pursuant to this section.

CHAPTER 100

(S. B. 523—By Senators Spears, Rundle, Blatnik, Pritt, Lucht and Boley)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-c; to amend article sixteen, chapter thirty-three of said code by adding thereto a

new section, designated section three-g; to amend article twenty-four of said chapter thirty-three by adding thereto a new section, designated section seven-b; to amend article twenty-five of said chapter by adding thereto a new section, designated section eight-a; and to amend article twenty-five-a of said chapter by adding thereto a new section, designated section eight-a, all relating to insurance; and requiring third party reimbursement for mammography and pap smear testing.

Be it enacted by the Legislature of West Virginia:

That article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-c; that article sixteen, chapter thirty-three of said code be amended by adding thereto a new section, designated section three-g; that article twenty-four of said chapter be amended by adding thereto a new section, designated section seven-b; that article twenty-five of said chapter be amended by adding thereto a new section, designated section eight-a; and that article twenty-five-a of said chapter be amended by adding thereto a new section, designated section eight-a, all to read as follows:

CHAPTER 33. INSURANCE.

Article

- 15. Accident and Sickness Insurance.
- 16. Group Accident and Sickness Insurance
- 24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
- 25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4c. Third party reimbursement for mammography or pap smear testing.

- 1 Notwithstanding any provision of any policy, provi-
- 2 sion, contract, plan or agreement to which this article
- 3 applies, whenever reimbursement or indemnity for
- 4 laboratory or X-ray services are covered, reimburse-
- 5 ment or indemnification shall not be denied for mam-
- 6 mograms or pap smears when performed for cancer

7 screening or diagnostic purposes, at the direction of a
8 person licensed to practice medicine and surgery by the
9 board of medicine: (1) A baseline mammogram for
10 women age thirty-five to thirty-nine, inclusive; (2) a
11 mammogram for women age forty to forty-nine, inclu-
12 sive, every two years or more frequently based on the
13 woman's physician's recommendation; (3) a mammo-
14 gram every year for women age fifty and over; (4) a pap
15 smear annually or more frequently based on the
16 woman's physician's recommendation for women age
17 eighteen or over. A policy, provision, contract, plan or
18 agreement may apply to mammograms or pap smears,
19 the same deductibles, coinsurance and other limitations
20 as apply to other covered services.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

**§33-16-3g. Third party reimbursement for mammo-
graphy or pap smear testing.**

1 Notwithstanding any provision of any policy, provi-
2 sion, contract, plan or agreement to which this article
3 applies, whenever reimbursement or indemnity for
4 laboratory or X-ray services are covered, reimburse-
5 ment or indemnification shall not be denied for mam-
6 mograms or pap smears when performed for cancer
7 screening or diagnostic purposes, at the direction of a
8 person licensed to practice medicine and surgery by the
9 board of medicine: (1) A baseline mammogram for
10 women age thirty-five to thirty-nine, inclusive; (2) a
11 mammogram for women age forty to forty-nine, inclu-
12 sive, every two years or more frequently based on the
13 woman's physician's recommendation; (3) a mammo-
14 gram every year for women age fifty and over; (4) a pap
15 smear annually or more frequently based on the
16 woman's physician's recommendation for women age
17 eighteen or over. A policy, provision, contract, plan or
18 agreement may apply to mammograms or pap smears,
19 the same deductibles, coinsurance and other limitations
20 as apply to other covered services.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE
CORPORATIONS.**

**§33-24-7b. Third party reimbursement for mammo-
graphy or pap smear testing.**

1 Notwithstanding any provision of any policy, provi-
2 sion, contract, plan or agreement to which this article
3 applies, whenever reimbursement or indemnity for
4 laboratory or X-ray services are covered, reimburse-
5 ment or indemnification shall not be denied for mam-
6 mograms or pap smears when performed for cancer
7 screening or diagnostic purposes, at the direction of a
8 person licensed to practice medicine and surgery by the
9 board of medicine: (1) A baseline mammogram for
10 women age thirty-five to thirty-nine, inclusive; (2) a
11 mammogram for women age forty to forty-nine, inclu-
12 sive, every two years or more frequently based on the
13 woman's physician's recommendation; (3) a mammo-
14 gram every year for women age fifty and over; (4) a pap
15 smear annually or more frequently based on the
16 woman's physician's recommendation for women age
17 eighteen or over. A policy, provision, contract, plan or
18 agreement may apply to mammograms or pap smears,
19 the same deductibles, coinsurance and other limitations
20 as apply to other covered services.

ARTICLE 25. HEALTH CARE CORPORATIONS.

**§33-25-8a. Third party reimbursement for mammo-
graphy or pap smear testing.**

1 Notwithstanding any provision of any policy, provi-
2 sion, contract, plan or agreement to which this article
3 applies, whenever reimbursement or indemnity for
4 laboratory or X-ray services are covered, reimburse-
5 ment or indemnification shall not be denied for mam-
6 mograms or pap smears when performed for cancer
7 screening or diagnostic purposes, at the direction of a
8 person licensed to practice medicine and surgery by the
9 board of medicine: (1) A baseline mammogram for
10 women age thirty-five to thirty-nine, inclusive; (2) a
11 mammogram for women age forty to forty-nine, inclu-
12 sive, every two years or more frequently based on the
13 woman's physician's recommendation; (3) a mammo-
14 gram every year for women age fifty and over; (4) a pap
15 smear annually or more frequently based on the

16 woman's physician's recommendation for women age
17 eighteen or over. A policy, provision, contract, plan or
18 agreement may apply to mammograms or pap smears,
19 the same deductibles, coinsurance and other limitations
20 as apply to other covered services.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

**§33-25A-8a. Third party reimbursement for mammo-
graphy and pap smear testing.**

1 Notwithstanding any provision of any policy, provi-
2 sion, contract, plan or agreement to which this article
3 applies, whenever reimbursement or indemnity for
4 laboratory or X-ray services are covered, reimburse-
5 ment or indemnification shall not be denied for mam-
6 mograms or pap smears when performed for cancer
7 screening or diagnostic purposes, at the direction of a
8 person licensed to practice medicine and surgery by the
9 board of medicine: (1) A baseline mammogram for
10 women age thirty-five to thirty-nine, inclusive; (2) a
11 mammogram for women age forty to forty-nine, inclu-
12 sive, every two years or more frequently based on the
13 woman's physician's recommendation; (3) a mammo-
14 gram every year for women age fifty and over; (4) a pap
15 smear annually or more frequently based on the
16 woman's physician's recommendation for women age
17 eighteen or over. A policy, provision, contract, plan or
18 agreement may apply to mammograms or pap smears,
19 the same deductibles, coinsurance and other limitations
20 as apply to other covered services.

CHAPTER 101

(H. B. 2526—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed April 4, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-
three, chapter thirty-three of the code of West Virginia,
one thousand nine hundred thirty-one, as amended; to
amend and reenact section four, article twenty-four of

said chapter; to further amend said chapter by adding thereto a new article, designated article fifteen-a; and to amend and reenact section twenty-four, article twenty-five-a of said chapter, all relating to the West Virginia long-term care insurance act; short title; declaration of policy and purpose; applicability; definitions; extraterritorial jurisdiction; group long-term care insurance; disclosure and performance standards for long-term care insurance; and severability.

Be it enacted by the Legislature of West Virginia:

That section two, article twenty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section four, article twenty-four of said chapter be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article fifteen-a; and that section twenty-four, article twenty-five-a of said chapter be amended and reenacted, all to read as follows:

CHAPTER 33. INSURANCE.

Article.

15A. West Virginia Long-Term Care Insurance Act.

23. Fraternal Benefit Societies.

24. Hospital Service Corporations, Medical Service Corporations,
Dental Service Corporations and Health Service Corporations.

25A. Health Maintenance Organization Act.

ARTICLE 15A. WEST VIRGINIA LONG-TERM CARE INSURANCE ACT.

§33-15A-1. Short title.

§33-15A-2. Declaration of policy and purpose.

§33-15A-3. Applicability.

§33-15A-4. Definitions.

§33-15A-5. Extraterritorial jurisdiction—Group long-term care insurance.

§33-15A-6. Disclosure and performance standards for long-term care insurance.

§33-15A-7. Severability.

§33-15A-1. Short title.

- 1 This article may be known and cited as the West
- 2 Virginia Long-Term Care Insurance Act.

§33-15A-2. Declaration of policy and purpose.

- 1 The purpose of this act is to promote the public

2 interest, to promote the availability of long-term care
3 insurance policies, to protect applicants for long-term
4 care insurance, as defined, from unfair or deceptive
5 sales or enrollment practices, to establish standards for
6 long-term care insurance, to facilitate public under-
7 standing and comparison of long-term care insurance
8 policies, and to facilitate flexibility and innovation in the
9 development of long-term care insurance coverage.

§33-15A-3. Applicability.

1 The requirements of this act shall apply to policies
2 delivered or issued for delivery in this state on or after
3 the effective date of this act. This act is not intended to
4 supersede the obligations of entities subject to this act
5 to comply with the substance of other applicable
6 insurance laws insofar as they do not conflict with this
7 act, except that laws and regulations designed and
8 intended to apply to medicare supplement insurance
9 policies shall not be applied to long-term care insurance.

§33-15A-4. Definitions.

1 (a) "Long-term care insurance" means any insurance
2 policy or rider advertised, marketed, offered or designed
3 to provide benefits for not less than twenty-four
4 consecutive months for each covered person on an
5 expense incurred, indemnity, prepaid or other basis; for
6 one or more necessary or medically necessary diagnos-
7 tic, preventive, therapeutic, rehabilitative, maintenance
8 or personal care services, provided in a setting other
9 than an acute care unit of a hospital. Such term includes
10 group and individual policies or riders whether issued
11 by insurers; fraternal benefit societies; nonprofit health,
12 hospital, and medical service corporations; prepaid
13 health plans; health maintenance organizations or any
14 similar organization. Any insurance policy which is
15 offered primarily to provide basic medicare supplement
16 coverage, basic hospital expense coverage, basic medi-
17 cal-surgical expense coverage, hospital confinement
18 indemnity coverage, major medical expense coverage,
19 disability income protection coverage, accident only
20 coverage, specified disease or specified accident cover-
21 age, or limited benefit health coverage which also

22 contains long-term care insurance benefits for at least
23 six months shall comply with the provisions of this act.

24 (b) "Applicant" means:

25 (1) In the case of an individual long-term care
26 insurance policy, the person who seeks to contract for
27 benefits, and

28 (2) In the case of a group long-term care insurance
29 policy, the proposed certificate holder.

30 (c) "Certificate" means, for the purposes of this act,
31 any certificate issued under a group long-term care
32 insurance policy, which policy has been delivered or
33 issued for delivery in this state.

34 (d) "Commissioner" means the insurance commis-
35 sioner of this state.

36 (e) "Group long-term care insurance" means a long-
37 term care insurance policy which is delivered or issued
38 for delivery in this state and issued to:

39 (1) One or more employers or labor organizations, or
40 to a trust or to the trustees of a fund established by one
41 or more employers or labor organizations, or a combi-
42 nation thereof, for employees or former employees or a
43 combination thereof or for members or former members
44 or a combination thereof, of the labor organizations; or

45 (2) Any professional, trade or occupational association
46 for its members or former or retired members, or
47 combination thereof, if such association:

48 (A) Is composed of individuals all of whom are or
49 were actively engaged in the same profession, trade or
50 occupation; and

51 (B) Has been maintained in good faith for purposes
52 other than obtaining insurance; or

53 (3) An association or a trust or the trustee(s) of a fund
54 established, created or maintained for the benefit of
55 members of one or more associations. Prior to advertis-
56 ing, marketing or offering such policy within this state,
57 the association or associations, or the insurer of the
58 association or associations, shall file evidence with the

59 commissioner that the association or associations have at
60 the outset a minimum of one hundred persons and have
61 been organized and maintained in good faith for the
62 purposes other than that of obtaining insurance; have
63 been in active existence for at least one year; and have
64 a constitution and by-laws which provide that:

65 (A) The association or associations hold regular
66 meetings not less than annually to further purposes of
67 the members;

68 (B) Except for credit unions, the association or
69 associations collect dues or solicit contributions from
70 members; and

71 (C) The members have voting privileges and repre-
72 sentation on the governing board and committees.

73 Thirty days after such filing the association or
74 associations will be deemed to satisfy such organiza-
75 tional requirements, unless the commissioner makes a
76 finding that the association or associations do not satisfy
77 those organizational requirements.

78 (4) A group other than as described in subdivisions
79 (1), (2) and (3), subsection (e) of this section, subject to
80 a finding by the commissioner that:

81 (A) The issuance of the group policy is not contrary
82 to the best interest of the public;

83 (B) The issuance of the group policy would result in
84 economies of acquisition or administration;

85 (C) The benefits are reasonable in relation to the
86 premiums charged.

87 (f) "Policy" means, for the purposes of this act, any
88 policy, contract, subscriber agreement, rider or endorse-
89 ment delivered or issued for delivery in this state by an
90 insurer; fraternal benefit society; nonprofit health,
91 hospital, or medical service corporation; prepaid health
92 plan; health maintenance organization or any similar
93 organization.

§33-15A-5. Extraterritorial jurisdiction—Group long-term care insurance.

1 (a) No group long-term care insurance coverage may

2 be offered to a resident of this state under a group policy
3 issued in another state to a group described in subdi-
4 vision (4), subsection (e), section four of this article
5 unless this state or another state having statutory and
6 regulatory long-term care insurance requirements
7 substantially similar to those adopted in this state has
8 made a determination that such requirements have been
9 met.

10 (b) Any such group policy form and any group
11 certification form issued under the group, shall be filed
12 with the commissioner for informational purposes with
13 evidence of the determination required by subsection (a)
14 of this section.

**§33-15A-6. Disclosure and performance standards for
long-term care insurance.**

1 (a) The commissioner may adopt rules and regula-
2 tions that include standards for full and fair disclosure
3 setting forth the manner, content and required disclo-
4 sures for the sale of long-term care insurance policies,
5 terms of renewability, initial and subsequent conditions
6 of eligibility, nonduplication of coverage provisions,
7 coverage of dependents, preexisting conditions, termina-
8 tion of insurance, continuation or conversion, probation-
9 ary periods, limitations, exceptions, reductions, elimina-
10 tion periods, requirements for replacement, recurrent
11 conditions and definitions of terms.

12 (b) No long-term care insurance policy may:

13 (1) Be canceled, nonrenewed or otherwise terminated
14 on the grounds of the age or the deterioration of the
15 mental or physical health of the insured individual or
16 certificate holder; or

17 (2) Contain a provision establishing a new waiting
18 period in the event existing coverage is converted to or
19 replaced by a new or other form within the same
20 company, except with respect to an increase in benefits
21 voluntarily selected by the insured individual or group
22 policyholder; or

23 (3) Provide coverage for skilled nursing care only or
24 provide significantly more coverage for skilled care in
25 a facility than coverage for lower levels of care.

26 (c) Preexisting condition:

27 (1) No long-term care insurance policy or certificate
28 other than a policy or certificate thereunder issued to
29 a group as defined in subdivision (1), subsection (e),
30 section four of this article shall use a definition of
31 "preexisting condition" which is more restrictive than
32 the following: Preexisting condition means a condition
33 for which medical advice or treatment was recom-
34 mended by, or received from a provider of health care
35 services, within six months preceding the effective date
36 of coverage of an insured person.

37 (2) No long-term care insurance policy or certificate
38 other than a policy or certificate thereunder issued to
39 a group as defined in subdivision (1), subsection (e),
40 section four of this article may exclude coverage for a
41 loss or confinement which is the result of a preexisting
42 condition unless such loss or confinement begins within
43 six months following the effective date of coverage of an
44 insured person.

45 (3) The commissioner may extend the limitation
46 periods set forth in subdivisions (1) and (2), subsection
47 (c) of this section as to specific age group categories in
48 specific policy forms upon findings that the extension is
49 in the best interest of the public.

50 (4) The definition of "preexisting condition" does not
51 prohibit an insurer from using an application form
52 designed to elicit a complete health history of an
53 applicant, and, on the basis of the answers on that
54 application, from underwriting in accordance with that
55 insurer's established underwriting standards. Unless
56 otherwise provided in the policy or certificate, a
57 preexisting condition, regardless of whether it is
58 disclosed on the application, need not be covered until
59 the waiting period described in subdivision (2), subsec-
60 tion (c) of this section expires. No long-term care
61 insurance policy or certificate may exclude or use
62 waivers or riders of any kind to exclude, limit or reduce
63 coverage or benefits for specifically named or described
64 preexisting diseases or physical conditions beyond the
65 waiting period described in subdivision (2), subsection
66 (c) of this section.

67 (d) Prior hospitalization/institutionalization:

68 (1) Effective July 1, 1990, no long-term care insurance
69 policy may be delivered or issued for delivery in this
70 state if such policy:

71 (A) Conditions eligibility for any benefits on a prior
72 hospitalization requirement; or

73 (B) Conditions eligibility for benefits provided in an
74 institutional care setting on the receipt of a higher level
75 of institutional care.

76 (2) Effective July 1, 1990, a long-term care insurance
77 policy containing any limitations or conditions for
78 eligibility other than those prohibited above in para-
79 graph (1) shall clearly label in a separate paragraph of
80 the policy or certificate entitled "Limitations or Condi-
81 tions on Eligibility for Benefits" such limitations or
82 conditions, including any required number of days of
83 confinement.

84 (A) A long-term care insurance policy containing a
85 benefit advertised, marketed or offered as a home health
86 care or home care benefit may not condition receipt of
87 benefits on a prior institutionalization requirement.

88 (B) A long-term care insurance policy which condi-
89 tions eligibility of noninstitutional benefits on the prior
90 receipt of institutional care shall not require a prior
91 institutional stay of more than thirty (30) days for which
92 benefits are paid.

93 (3) No long-term care insurance policy which provides
94 benefits only following institutionalization shall condi-
95 tion such benefits upon admission to a facility for the
96 same or related conditions within a period of less than
97 thirty days after discharge from the institution.

98 (e) The commissioner may adopt regulations estab-
99 lishing loss ratio standards for long-term care insurance
100 policies provided that a specific reference to long-term
101 care insurance policies is contained in the regulation.

102 (f) Right to return-free look:

103 (1) Individual long-term care insurance policyholders

104 shall have the right to return the policy within ten days
105 of its delivery and to have the premium refunded if,
106 after examination of the policy, the policyholder is not
107 satisfied for any reason. Individual long-term care
108 insurance policies shall have a notice prominently
109 printed on the first page of the policy or attached thereto
110 stating in substance that the policyholder shall have the
111 right to return the policy within ten days of its delivery
112 and to have the premium refunded if, after examination
113 of the policy, the policyholder is not satisfied for any
114 reason.

115 (2) A person insured under a long-term care insu-
116 rance policy issued pursuant to a direct response
117 solicitation shall have the right to return the policy
118 within thirty days of its delivery and to have the
119 premium refunded if, after examination, the insured
120 person is not satisfied for any reason. Long-term care
121 insurance policies issued pursuant to a direct response
122 solicitation shall have a notice prominently printed on
123 the first page or attached thereto stating in substance
124 that the insured person shall have the right to return
125 the policy within thirty days of its delivery and to have
126 the premium refunded if after examination the insured
127 person is not satisfied for any reason.

128 (g) Outline of coverage:

129 (1) An outline of coverage shall be delivered to a
130 prospective applicant for long-term care insurance at
131 the time of initial solicitation through means which
132 prominently direct the attention of the recipient to the
133 document and its purpose.

134 (A) The commissioner shall prescribe a standard
135 format, including style, arrangement and overall
136 appearance, and the content of an outline of coverage.

137 (B) In the case of agent solicitations, an agent must
138 deliver the outline of coverage prior to the presentation
139 of an application or enrollment form.

140 (C) In the case of direct response solicitations, the
141 outline of coverage must be presented in conjunction
142 with any application or enrollment form.

- 143 (2) The outline of coverage shall include:
- 144 (A) A description of the principal benefits and
145 coverage provided in the policy;
- 146 (B) A statement of the principal exclusions, reduc-
147 tions, and limitations contained in the policy;
- 148 (C) A statement of the terms under which the policy
149 or certificate, or both, may be continued in force or
150 discontinued, including any reservation in the policy of
151 a right to change premium. Continuation or conversion
152 provisions of group coverage shall be specifically
153 described;
- 154 (D) A statement that the outline of coverage is a
155 summary only, not a contract of insurance, and that the
156 policy or group master policy contain governing
157 contractual provisions;
- 158 (E) A description of the terms under which the policy
159 or certificate may be returned and premium refunded;
160 and
- 161 (F) A brief description of the relationship of cost of
162 care and benefits.
- 163 (h) A certificate issued pursuant to a group long-term
164 care insurance policy which policy is delivered or issued
165 for delivery in this state shall include:
- 166 (1) A description of the principal benefits and cover-
167 age provided in the policy;
- 168 (2) A statement of the principal exclusions, reductions
169 and limitations contained in the policy; and
- 170 (3) A statement that the group master policy deter-
171 mines governing contractual provisions.
- 172 (i) Any policy advertising, marketing or offering long-
173 term care or nursing home insurance benefits shall
174 comply with the provisions of this act.

§33-15A-7. Severability.

- 1 If any provision of this act or the application thereof
2 to any person or circumstance is for any reason held to
3 be invalid, the remainder of the act and application of

- 4 such provision to other persons or circumstances shall
5 not be affected thereby.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

***§33-23-2. Other provisions of chapter applicable.**

- 1 Every fraternal benefit society shall be governed and
2 be subject, to the same extent as other insurers
3 transacting like kinds of insurance, to the following
4 articles of this chapter:

- 5 Article one [33-1-1 et seq.] (definitions), article two
6 [33-2-1 et seq.] (insurance commissioner), article four
7 [33-4-1 et seq.] (general provisions), article ten [33-10-1
8 et seq.] (rehabilitation and liquidation), article eleven
9 [33-11-1 et seq.] (unfair trade practices) article thirteen
10 [33-13-1 et seq.] (life insurance) and article fifteen-a [33-
11 15A-1 et seq.] (long-term care insurance).

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE
CORPORATIONS.**

****§33-24-4. Exemptions; applicability of other laws.**

- 1 Every such corporation is hereby declared to be a
2 scientific, nonprofit institution and as such exempt from
3 the payment of all property and other taxes. Every such
4 corporation, to the same extent such provisions are
5 applicable to insurers transacting similar kinds of
6 insurance and not inconsistent with the provisions of this
7 article, shall be governed by and be subject to the
8 provisions, as hereinbelow indicated, of the following
9 articles of this chapter: Article two [33-2-1 et seq.]
10 (insurance commissioner) except that under section nine
11 [33-2-9] of article two examinations shall be conducted
12 at least once every four years, article four [33-4-1 et seq.]
13 (general provisions) except that section sixteen [33-4-16]
14 of article four shall not be applicable thereto, article ten

* Clerk's Note: This section was also amended by H. B. 2286 and H. B. 2588, which passed prior to this act.

** Clerk's Note: This section (§33-24-4) was also amended by S. B. 252 and H. B. 2588, which passed subsequent to this act.

15 [33-10-1 et seq.] (rehabilitation and liquidation), article
16 eleven [33-11-1 et seq.] (unfair practices and frauds),
17 article twelve [33-12-1 et seq.] (agents, brokers and
18 solicitors) except that the agent's license fee shall be five
19 dollars, article fifteen-a [33-15A-1 et seq.] (long-term
20 care insurance), section three-c [33-16-3c], article sixteen
21 (group accident and sickness insurance), section three-
22 d [33-16-3d], article sixteen (medicare supplement) and
23 article twenty-eight [33-28-1 et seq.] (individual accident
24 and sickness insurance minimum standards); and no
25 other provision of this chapter shall apply to such
26 corporations unless specifically made applicable by the
27 provisions of this article. If, however, any such corpo-
28 ration shall be converted into a corporation organized
29 for a pecuniary profit, or if it shall transact business
30 without having obtained a license as required by section
31 five [33-24-5] of this article, it shall thereupon forfeit its
32 right to these exemptions.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

***§33-25A-24. Statutory construction and relationship to other laws.**

1 (1) Except as otherwise provided in this article,
2 provisions of the insurance law and provisions of
3 hospital or medical service corporation laws shall not be
4 applicable to any health maintenance organization
5 granted a certificate of authority under this article. This
6 provision shall not apply to an insurer or hospital or
7 medical service corporation licensed and regulated
8 pursuant to the insurance laws or the hospital or
9 medical service corporation laws of this state except
10 with respect to its health maintenance corporation
11 activities authorized and regulated pursuant to this
12 article.

13 (2) Factually accurate advertising or solicitation
14 regarding the range of services provided, the premiums
15 and copayments charged, the sites of services and hours
16 of operation, and any other quantifiable, nonprofessional
17 aspects of its operation by a health maintenance
18 organization granted a certificate of authority, or its

*Clerk's Note: This section was also amended by S. B. 252, which passed subsequent to this act.

19 representative shall not be construed to violate any
20 provision of law relating to solicitation or advertising by
21 health professions: *Provided*, That nothing contained
22 herein shall be construed as authorizing any solicitation
23 or advertising which identifies or refers to any individ-
24 ual provider, or makes any qualitative judgment
25 concerning any provider.

26 (3) Any health maintenance organization authorized
27 under this article shall not be deemed to be practicing
28 medicine and shall be exempt from the provision of
29 chapter thirty of this code, relating to the practice of
30 medicine.

31 (4) Any long-term care insurance policy delivered or
32 issued for delivery in this state by a health maintenance
33 organization shall comply with the provisions of article
34 fifteen-a of this chapter.

CHAPTER 102

(Com. Sub. for S. B. 252—By Senators Jackson, Tomblin, Jones and Lucht)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-four, article twenty-five-a of said chapter; and to amend article sixteen of said chapter by adding thereto a new section, designated section three-f, all relating to insurance policies; hospital service corporations, medical service corporations and dental service corporations; exemptions; health maintenance organizations; and requiring the insurance commissioner to promulgate rules and regulations for the treatment of temporomandibular joint disorder and craniomandibular disorder.

Be it enacted by the Legislature of West Virginia:

That section four, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, be amended and reenacted; that section twenty-four, article twenty-five-a of said chapter be amended and reenacted; and that article sixteen of said chapter be amended by adding thereto a new section, designated section three-f, all to read as follows:

Article

16. Group Accident and Sickness Insurance.

24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.

25A. Health Maintenance Organization Act.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3f. Required policy provisions—Treatment of temporomandibular joint disorder and craniomandibular disorder.

1 (a) The Legislature hereby finds that there is a need
2 to provide guidelines regarding the coverage of tempo-
3 romandibular joint disorder and craniomandibular
4 disorder in policies issued pursuant to this article and
5 article fifteen of this chapter, in order to provide for the
6 health of our citizens. The purpose of this section is to
7 require the insurance commissioner to develop stand-
8 ards regarding temporomandibular joint disorder and
9 craniomandibular disorder and to require that all
10 insurers writing accident and sickness policies which
11 are covered by this article or article fifteen of this
12 chapter, and the public employees insurance agency as
13 set forth in article sixteen of chapter five make available
14 this coverage to the policyholder or sponsor of each such
15 policy. For purposes of this section, the public employees
16 insurance agency is the policyholder.

17 (b) The insurance commissioner shall promulgate
18 rules and regulations regarding the diagnosis and
19 treatment for temporomandibular joint disorder and
20 craniomandibular disorder coverage in accident and
21 sickness policies covered by this article and article
22 fifteen of this chapter. Such regulations shall prescribe
23 the manner by which such coverage shall be offered to
24 the policyholder or sponsor; that benefits shall apply
25 whether administered by a physician or dentist, and
26 findings regarding the projected actuarial costs of
27 implementing said regulations.

28 (c) The regulations shall be developed by the insu-
29 rance commissioner with the advice of a six-member
30 panel to be appointed by the commissioner. Such panel
31 shall consist of a general practicing dentist who shall be
32 recommended by the West Virginia Dental Association,
33 an oral and maxillofacial surgeon who shall be recom-
34 mended by the West Virginia Society for Oral and
35 Maxillofacial Dentists, a physician who shall be recom-
36 mended by the West Virginia State Medical Association,
37 a member from a Health Services Corporation who shall
38 be recommended by the Health Services Corporation in
39 this state, a member representing commercial health
40 insurers who shall be recommended by the association
41 representing accident and sickness insurance, and a
42 representative of the Public Employees Insurance
43 Association.

44 The insurance commissioner shall make his appoint-
45 ments to the panel based solely upon said recommenda-
46 tions thirty days after this section takes effect.

47 (d) This section shall only apply to policies of insu-
48 rance which provide hospital, surgical or major medical
49 expense insurance or any combination of these cover-
50 ages.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE
CORPORATIONS.**

***§33-24-4. Exemptions; applicability of other laws.**

1 Every such corporation is hereby declared to be a
2 scientific, nonprofit institution and as such exempt from
3 the payment of all property and other taxes. Every such
4 corporation, to the same extent such provisions are
5 applicable to insurers transacting similar kinds of
6 insurance and not inconsistent with the provisions of this
7 article, shall be governed by and be subject to the
8 provisions, as hereinbelow indicated, of the following
9 articles of this chapter: Article two (insurance commis-
10 sioner) except that under section nine of article two

*Clerk's Note: This section was also amended by H. B. 2526, which passed April 4, 1989, and H. B. 2588, which passed subsequent to this act.

11 examinations shall be conducted at least once every four
12 years, article four (general provisions) except that
13 section sixteen of article four shall not be applicable
14 thereto, article ten (rehabilitation and liquidation),
15 article eleven (unfair practices and frauds), article
16 twelve (agents, brokers and solicitors) except that the
17 agent's license fee shall be five dollars, section three-c,
18 article sixteen (group accident and sickness insurance),
19 section three-d, article sixteen (medicare supplement),
20 article sixteen, section three-f, (treatment of temporo-
21 mandibular joint disorder and craniomandibular dis-
22 order), and article twenty-eight (individual accident and
23 sickness insurance minimum standards); and no other
24 provision of this chapter shall apply to such corporations
25 unless specifically made applicable by the provisions of
26 this article. If, however, any such corporation shall be
27 converted into a corporation organized for a pecuniary
28 profit, or if it shall transact business without having
29 obtained a license as required by section five of this
30 article, it shall thereupon forfeit its right to these
31 exemptions.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

***§33-25A-24. Statutory construction and relationship to other laws.**

1 (1) Except as otherwise provided in this article,
2 provisions of the insurance law and provisions of
3 hospital or medical service corporation laws shall not be
4 applicable to any health maintenance organization
5 granted a certificate of authority under this article. This
6 provision shall not apply to an insurer or hospital or
7 medical service corporation licensed and regulated
8 pursuant to the insurance laws or the hospital or
9 medical service corporation laws of this state except
10 with respect to its health maintenance corporation
11 activities authorized and regulated pursuant to this
12 article.

13 (2) Factually accurate advertising or solicitation
14 regarding the range of services provided, the premiums

* Clerk's Note: This section was also amended by H. B. 2526, which passed prior to this act.

15 and copayments charged, the sites of services and hours
16 of operation, and any other quantifiable, nonprofessional
17 aspects of its operation by a health maintenance
18 organization granted a certificate of authority, or its
19 representative shall not be construed to violate any
20 provision of law relating to solicitation or advertising by
21 health professions: *Provided*, That nothing contained
22 herein shall be construed as authorizing any solicitation
23 or advertising which identifies or refers to any individ-
24 ual provider, or makes any qualitative judgment
25 concerning any provider.

26 (3) Any health maintenance organization authorized
27 under this article shall not be deemed to be practicing
28 medicine and shall be exempt from the provision of
29 chapter thirty of this code, relating to the practice of
30 medicine.

31 (4) The provisions of section three-f of article sixteen
32 of this chapter concerning treatment of temporomandib-
33 ular disorder and craniomandibular disorder shall be
34 applicable to any health maintenance organization
35 granted a certificate of authority under this article.

CHAPTER 103

(H. B. 2391—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed April 5, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen-b, relating to providing for a mechanism for approval or disapproval of premium rate charges for accident and sickness insurance policies; exceptions.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by

adding thereto a new article, designated article sixteen-b, to read as follows:

ARTICLE 16B. ACCIDENT AND SICKNESS RATES.

§33-16B-1. Filing and approval of accident and sickness rates.

§33-16B-2. Ratemaking standards.

§33-16B-3. Exceptions.

§33-16B-1. Filing and approval of accident and sickness rates.

1 Premium rate charges for any individual accident and
2 sickness insurance policy or for any group accident and
3 sickness insurance policy issued pursuant to this chapter
4 shall be filed with the commissioner for a waiting period
5 of sixty days before such charges become effective. At
6 the expiration of such sixty days the premium rate
7 charges so filed shall be deemed approved unless prior
8 thereto the charges have been affirmatively approved or
9 disapproved by the commissioner.

10 The commissioner shall disapprove accident and
11 health insurance premium rates which are not in
12 compliance with the requirements of this chapter or any
13 rule promulgated by the commissioner pursuant to
14 section two of this article. The commissioner shall send
15 written notice of such disapproval to the insurer. The
16 commissioner may approve the premium rates before
17 the sixty-day period expires by giving written notice of
18 approval.

§33-16B-2. Ratemaking standards.

1 Premium rates charged for any individual accident
2 and health insurance policy or for any group accident
3 and health insurance policy issued pursuant to this
4 chapter shall be reasonable in relation to the benefits
5 available under the policy. The commissioner shall
6 promulgate rules pursuant to chapter twenty-nine-a to
7 establish minimum ratemaking standards in accordance
8 with accepted actuarial principles and practices.

§33-16B-3. Exceptions.

1 This article shall not apply to group accident and

- 2 health insurance plans upon which premiums are
3 negotiated with the individual policyholder and are
4 based on the historic and projected loss experience of the
5 group to be insured.

CHAPTER 104

(S. B. 296—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article twenty-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing that insurers and not insureds be charged with a deficit incurred by the West Virginia essential insurance association as the result of loss due to any rate plan pursuant to the plan of operation.

Be it enacted by the Legislature of West Virginia:

That section five, article twenty-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 20A. WEST VIRGINIA ESSENTIAL INSURANCE COVERAGE ACT.

§33-20A-5. General powers.

- 1 (a) The association has, for purposes of this article and
2 to the extent approved by the commissioner, the general
3 powers and authority granted under the laws of this
4 state to insurers licensed to transact the kinds of
5 insurance as defined in chapter thirty-three, article one
6 of this code.

- 7 (b) The association may take any necessary action to
8 make available necessary insurance including, but not
9 limited to, the following:

- 10 (1) Assess participating insurers amounts necessary
11 to pay the obligations of the association, administration
12 expenses, the cost of examinations and other expenses
13 authorized under this article. The assessment of each
14 member insurer for the kind or kinds of insurance

15 designated in the plan shall be in the proportion that
16 the net direct written premiums of the member insurer
17 for the preceding calendar year bear to the net direct
18 written premiums of all members for the preceding
19 calendar year. A member insurer may not be assessed
20 in any year an amount greater than five percent of his
21 net direct written premiums for the preceding calendar
22 year. Each member insurer shall be allowed a premium
23 tax credit at the rate of twenty percent per year for five
24 successive years following termination of the association.
25 Each member insurer shall be allowed a premium tax
26 credit at the rate of twenty percent per year for five
27 successive years following payment of the assessment by
28 the member insurer for any deficit in the plan.

29 (2) Enter into such contracts as are necessary or
30 proper to carry out the provisions and purposes of the
31 provisions of this article.

32 (3) Sue or be sued, including taking legal action
33 necessary to recover any assessments for, on behalf of,
34 or against participant insurers.

35 (4) Investigate claims brought against the fund and
36 adjust, compromise, settle, and pay covered claims to the
37 extent of the association's obligation and deny all other
38 claims. Claims may be processed through the associa-
39 tion's employees or through one or more member
40 insurers or other persons designated as servicing
41 facilities. Designation of a service facility is subject to
42 the approval of the commissioner, but such designation
43 may be declined by a member insurer.

44 (5) Classify risks as may be applicable and equitable.

45 (6) Establish appropriate rates, rate classifications
46 and rating adjustments, and file such rates with the
47 commissioner as may be required. Rates, rating plans
48 and any provision for recoupment shall be based upon
49 the association's loss and expense experience and
50 investment income from unearned premium and loss
51 reserves. Premium rates, including initial premiums,
52 shall be on an actuarially sound basis and shall be
53 calculated to be self-supporting.

54 (7) Administer any type of reinsurance program for

55 or on behalf of the association or any participating
56 carriers.

57 (8) Pool risks among participating carriers.

58 (9) Issue and market through agents, policies of
59 insurance providing coverage required by this article in
60 its own name or on behalf of participating carriers.

61 (10) Administer separate pools, separate accounts, or
62 other plans as may be deemed appropriate for separate
63 carriers or groups of carriers.

64 (11) Invest, reinvest and administer all funds and
65 moneys held by the association.

66 (12) Borrow funds needed by the association to effect
67 the purposes of this section.

68 (13) Develop, effectuate and promulgate any loss
69 prevention programs aimed at the best interests of the
70 association and the insured public.

71 (14) Operate and administer any combination of
72 plans, pools, reinsurance arrangements or other mech-
73 anisms as deemed appropriate to best accomplish the
74 fair and equitable operation of the association for the
75 purposes of making available essential insurance
76 coverage.

77 (15) Provide for the method of recoupment of deficits
78 that may be incurred by any plan pursuant to the plan
79 of operation. In no event shall a deficit incurred by the
80 association be charged directly or indirectly to any
81 person other than insurers under its fire and extended
82 coverage or essential insurance policy. The provisions of
83 article seventeen, section nine of this chapter shall not
84 apply to this article.

CHAPTER 105

(Com. Sub. for H. B. 2286—By Delegate Ashcraft)

[Passed April 7, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact sections two and thirty-three,
article twenty-three, chapter thirty-three of the code of
West Virginia, one thousand nine hundred thirty-one, as

amended, relating to requiring fraternal benefit societies to adhere to the provisions of article twelve of chapter thirty-three which deals with agents, brokers, solicitors and excess lines; and to requiring agents of such societies to be licensed.

Be it enacted by the Legislature of West Virginia:

That sections two and thirty-three, article twenty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-2. Other provisions of chapter applicable.

§33-23-33. Agents.

***§33-23-2. Other provisions of chapter applicable.**

1 Every fraternal benefit society shall be governed and
2 be subject, to the same extent as other insurers
3 transacting like kinds of insurance, to the following
4 articles of this chapter: Article one (definitions); article
5 two (insurance commissioner); article four (general
6 provisions); article ten (rehabilitation and liquidation);
7 article eleven (unfair trade practices); article twelve
8 (agents, brokers, solicitors and excess lines); and article
9 thirteen (life insurance).

§33-23-33. Agents.

1 Commencing on the first day of June, one thousand
2 nine hundred eighty-nine, agents for fraternal benefit
3 societies shall be required to be licensed pursuant to
4 chapter thirty-three of the code of West Virginia, one
5 thousand nine hundred thirty-one, as amended:
6 *Provided*, That any person who was acting as or serving
7 in the role of an agent for a fraternal benefit society on
8 or before the first day of July, one thousand nine
9 hundred eighty-nine, shall be exempt from the exami-
10 nation requirement of subsection (e), section two, article
11 twelve of this chapter: *Provided, however*, That any
12 person who is a salaried officer, employee or member
13 of a fraternal benefit society and who as an occasional

* Clerk's Note: This section was also amended by H. B. 2526 which passed prior to this act and by H. B. 2588, which passed subsequent to it.

14 and incidental duty of such position may solicit a
15 fraternal insurance contract from a member of such
16 fraternal benefit society such person shall be exempt
17 from the continuing education requirements otherwise
18 made subject to insurance agents by this chapter and
19 the examination requirements of subsection (e), section
20 two, article twelve of this chapter if such person receives
21 no commission or other compensation based directly on
22 such solicitation of fraternal insurance contracts and if
23 such person makes no solicitation of insurance of any
24 kind to or from persons who are not members of such
25 fraternal benefit society. For the purpose of this article
26 the solicitation of a fraternal insurance contract by such
27 salaried officer, employee, or member from a new
28 member of such society simultaneously with such new
29 member's joining such society shall be deemed the
30 solicitation of a member.

CHAPTER 106

(S. B. 621—Originating in the Committee on Small Business)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, five and seven, article one-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four, six, ten and fifteen, article six of said chapter twelve; to further amend said article by adding thereto a new section, designated section nine-c; and to amend and reenact section four, article twenty-two-d, chapter eighteen of said code, all relating to the linked deposit program and to the West Virginia state board of investments; providing definition of director; recognizing importance of involving state treasurer and director of governor's office of community and industrial development in linked deposit program to maximize impact of program; requiring director's approval of all linked deposit loan packages; providing that state, state treasurer and director not liable to any lending institu-

tion for payment of principal and interest on loans; expanding the membership of the West Virginia state board of investments; providing for appointment of members to the board by the governor; the qualifications for appointed members; the term of office for appointed members; providing for a support staff for the board; the compensation for said staff; the creation of a special revenue account; allowing the board to make a charge against the earnings of the funds managed by the board; providing for yearly appropriations by the Legislature, and yearly reports to the Legislature by the board with respect to the status of the special revenue account; providing that any excess in the special revenue account after appropriations be disbursed to fund participants on a pro-rata basis; to authorize the participation of various entities in an investment company or investment trust registered under 15 U.S.C. §80a; providing for semiannual internal audits and annual external audits; and to limit linked deposits as provided for in section four, article twenty-two-d, chapter eighteen of the code of West Virginia, to two million dollars annually and in an aggregate amount of twenty million dollars.

Be it enacted by the Legislature of West Virginia:

That sections one, two, five and seven, article one-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections three, four, six, ten and fifteen, article six of said chapter twelve be amended and reenacted; that said article six be further amended by adding thereto a new section, designated section nine-c; and that section four, article twenty-two-d, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter

12. Public Moneys and Securities.

18. Education.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article

1A. Linked Deposit Program.

6. West Virginia State Board of Investments.

ARTICLE 1A. LINKED DEPOSIT PROGRAM.

§12-1A-1. Definitions.

§12-1A-2. Legislative findings.

§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

§12-1A-7. Liability of state, state treasurer and director.

§12-1A-1. Definitions.

1 (a) "Director" means the director of the governor's
2 office of community and industrial development.

3 (b) "Eligible small business" means any business
4 which employs two hundred or less employees or has
5 gross annual receipts of four million dollars or less.

6 (c) "Eligible lending institution" means a financial
7 institution that is eligible to make commercial loans, is
8 a public depository of state funds and agrees to
9 participate in the linked deposit program.

10 (d) "Linked deposit" means a certificate of deposit
11 placed by the state treasurer with an eligible lending
12 institution at up to three percent below current market
13 rates, as determined and calculated by the state
14 treasurer, provided the institution agrees to lend the
15 value of such deposit, according to the deposit agree-
16 ment provided for by this article, to eligible small
17 businesses at three percent below the present borrowing
18 rate applicable to each specific business at the time of
19 the deposit of state funds in the institution.

§12-1A-2. Legislative findings.

1 The Legislature finds that many small businesses
2 throughout the state are experiencing economic stagna-
3 tion or decline, that high interest rates have caused
4 small businesses in this state to suffer disproportionately
5 in profitability and competition and that such high
6 interest rates have fostered a serious increase in
7 unemployment. The linked deposit program provided
8 for by this article is intended to provide a statewide
9 availability of lower cost funds for lending purposes that
10 will materially contribute to the economic revitalization
11 of this state. Accordingly, it is declared to be the public
12 policy of the state through the linked deposit program
13 to create an availability of lower-cost funds to inject

14 needed capital into the business community, sustain or
15 improve business profitability, protect the jobs of
16 citizens of this state and assist businesses located in any
17 county declared to be a federal disaster area by the
18 Federal Emergency Management Agency. The Legisla-
19 ture further finds that the involvement of both the state
20 treasurer and the director in determining which
21 businesses will receive the benefits of the linked deposit
22 program is necessary in order for state funds to be used
23 in the most effective manner possible in assisting small
24 businesses throughout the state and thereby maximizing
25 the impact of the program.

**§12-1A-5. Acceptance or rejection of loan package;
deposit agreement.**

1 (a) The state treasurer may accept or reject a linked
2 deposit loan package or any portion thereof, based on the
3 ratio of state funds to be deposited to jobs sustained or
4 created: *Provided*, That notwithstanding any provision
5 of this article to the contrary, the state treasurer may
6 not accept any linked deposit loan package or any
7 portion thereof unless the same has been reviewed and
8 approved by the director in his sole discretion.

9 (b) The state treasurer shall reject any linked deposit
10 loan package if the small business requesting such loan
11 is not in good standing with the state tax department,
12 department of employment security and the workers'
13 compensation fund, and these agencies shall provide the
14 state treasurer with such information as to the standing
15 of each small business loan applicant, notwithstanding
16 any provision of this code to the contrary.

17 (c) Any linked deposit loan package that is being made
18 to refinance an existing debt, or any portion thereof,
19 must meet one of the following criteria:

20 (1) The small business can demonstrate in good faith
21 that it is experiencing a substantial loss in its current
22 (fiscal or calendar) tax year period;

23 (2) The small business recently experienced a natural
24 disaster and suffered unreimbursable casualty losses;

25 (3) The small business has filed to recover under the

26 Federal Bankruptcy Act and meets the criteria in (1)
27 above; or

28 (4) The small business can provide compelling infor-
29 mation to the state treasurer that jobs will be saved
30 and/or created as a result of loan refinancing.

31 (d) Upon acceptance of the linked deposit loan
32 package or any portion thereof by the state treasurer
33 and the director, the state treasurer may place certif-
34 icates of deposit with the eligible lending institution at
35 three percent below current market rates, as deter-
36 mined and calculated by the state treasurer. Upon
37 acceptance of the linked deposit loan package for flood
38 victims or any portion thereof, the state treasurer may
39 place certificates of deposit with the eligible lending
40 institution at five percent below current market rates,
41 as determined and calculated by the state treasurer.
42 When necessary, the treasurer may place certificates of
43 deposit prior to acceptance of a linked deposit loan
44 package.

45 (e) The eligible lending institution shall enter into a
46 deposit agreement with the state treasurer, which shall
47 include requirements necessary to carry out the pur-
48 poses of this article. Such requirements shall reflect the
49 market conditions prevailing in the eligible lending
50 institution's lending area. The agreement may include
51 a specification of the period of time in which the lending
52 institution is to lend funds upon the placement of a
53 linked deposit and shall include provisions for the
54 certificates of deposit to be placed for up to two-year
55 maturities that may be renewed for up to an additional
56 two years. Interest shall be paid at the times determined
57 by the state treasurer.

§12-1A-7. Liability of state, state treasurer and director.

1 The state, the state treasurer and the director are not
2 liable to any eligible lending institution in any manner
3 for payment of the principal or interest on the loan to
4 an eligible small business. Any delay in payment or
5 default on the part of an eligible small business does not
6 in any manner affect the deposit agreement between the
7 eligible lending institution and the state treasurer.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-3. State board of investments continued; body corporate; members; appointment of certain members; qualifications and term of office.

§12-6-4. Officers; organization; surety bonds for members and employees.

§12-6-6. Costs and expenses; fees for services.

§12-6-9c. Authorization of additional investments.

§12-6-10. Restrictions on investments.

§12-6-15. Audits.

§12-6-3. State board of investments continued; body corporate; members; appointment of certain members; qualifications and term of office.

1 (a) The state board of investments is hereby continued
2 as a body corporate of the state authorized to exercise
3 all of the powers and functions granted to it pursuant
4 to this article. There shall be seven members of the state
5 board of investments. The governor, or his designee,
6 state treasurer and state auditor shall be the members
7 of the board. There shall be four members appointed by
8 the governor: *Provided*, That no more than three such
9 appointed members may belong to the same political
10 party.

11 (b) The members appointed by the governor shall be
12 appointed from a list of twelve persons submitted jointly
13 by the governor, the state treasurer, and the state
14 auditor. No more than two names submitted by the
15 governor may be appointed as members to the board.
16 Of the members appointed by the governor, two shall
17 be members of the financial community, one shall be a
18 certified public accountant, and one shall be an attorney
19 with experience in finance and investment matters.
20 Appointments shall be made by the governor with the
21 advice and consent of the Senate.

22 (c) Appointed members shall serve for a term of six
23 years and may be reappointed at the expiration of their
24 terms. In the event of a vacancy among appointed
25 members, an appointment shall be made to fill the
26 unexpired term.

27 (d) Appointed members of the board shall serve
28 without compensation, but shall be entitled to their
29 reasonable and necessary expenses actually incurred in
30 discharging their duties under this article.

§12-6-4. Officers; organization; surety bonds for members and employees.

1 (a) The governor shall be the chairman and the
2 custodian of all funds, securities and assets held by the
3 board and the board shall elect an executive secretary
4 to serve for a term of six years, such election to be held
5 at the board's first meeting after the effective date of
6 this article. The office of the state treasurer shall act as
7 a depository for all funds that may, from time to time,
8 from whatever source, be made available to the board
9 for investment. The office of the state treasurer shall act
10 as staff agency for the board.

11 (b) The board shall meet quarterly and may include
12 in its bylaws procedures for the calling and holding of
13 additional meetings.

14 (c) Each member of the board shall give a separate
15 and additional fidelity bond from a surety company
16 qualified to do business within this state in a penalty
17 amount of two hundred fifty thousand dollars for the
18 faithful performance of his duties as a member of the
19 board. In addition, the board will purchase a blanket
20 bond for the faithful performance of its duties in the
21 amount of five million dollars in excess of the two
22 hundred fifty thousand dollar individual bond required
23 of each member by the provisions of this section. The
24 board may require a fidelity bond from a surety
25 company qualified to do business in this state for any
26 person who has charge of, or access to, any securities,
27 funds or other moneys held by the board, and the
28 amount of such fidelity bond shall be fixed by the board.
29 The premiums payable on all fidelity bonds shall be an
30 expense of the board.

§12-6-6. Costs and expenses; fees for services.

1 (a) The board shall make a charge against the
2 earnings of the various funds managed by the board for
3 all necessary expenses of the board. Such charge shall
4 be on a pro-rata basis of actual earnings of the various
5 funds managed by the board. Such charge shall be
6 payable into a special revenue account hereby created
7 in the state treasury and named the "board management

8 account." The board is authorized to expend the moneys
9 deposited in this account for all costs and expenses of
10 the board, including fees of professional consultants,
11 advisors and auditors, brokerage commissions, and all
12 other necessary expenses of the board incurred in the
13 performance of its functions: *Provided*, That during any
14 fiscal year in which the board anticipates spending any
15 money from the special account, it shall submit to the
16 executive department during the budget preparation
17 period prior to the Legislature convening, before that
18 fiscal year for inclusion in the executive budget
19 document and budget bill, the request for appropri-
20 ations: *Provided, however*, That no funds may be ex-
21 pended from this account unless appropriated by the
22 Legislature.

23 (b) The board shall make an annual report to the
24 Legislature on the status of the board management
25 account, including the previous year's expenditures and
26 projected expenditures for the next year. Any amounts
27 remaining in the special account after yearly appropri-
28 ations by the Legislature shall be distributed on a pro-
29 rata basis, taking into account average daily balances,
30 to the participants of the various funds managed by the
31 board.

§12-6-9c. Authorization of additional investments.

1 Notwithstanding the restrictions which may otherwise
2 be provided by law with respect to the investment of
3 funds, each board, commission, department, official or
4 agency charged with the administration of state funds,
5 all administrators, custodians or trustees of pension
6 funds, each political subdivision of this state and each
7 county board of education is authorized to invest funds
8 in the securities of or any other interest in any
9 investment company or investment trust registered
10 under the Investment Company Act of 1940, 15 U.S.C.
11 §80a, the portfolio of which is limited to direct obliga-
12 tions of or obligations guaranteed as to the payment of
13 both principal and interest by the United States of
14 America and to repurchase agreements fully collateral-
15 ized by United States Government obligations: *Provided*,
16 That the investment company or investment trust takes

17 delivery of the collateral either directly or through an
18 authorized custodian.

§12-6-10. Restrictions on investments.

1 Moneys on deposit in the consolidated fund and the
2 consolidated pension fund shall be invested as permitted
3 by section nine of this article subject to the restrictions
4 and conditions contained in this section:

5 (1) At no time shall more than seventy-five percent of
6 the portfolio of either fund be invested in securities
7 described in subdivision (g) of said section nine;

8 (2) At no time shall more than twenty percent of the
9 portfolio of either fund be invested in securities
10 described in said subdivision (g) which mature within
11 one year from the date of issuance thereof;

12 (3) At no time shall more than three percent of the
13 portfolio of either fund be invested in securities issued
14 by a single private corporation or association.

15 For the purpose of making the computations required
16 by this section, securities shall be valued in accordance
17 with generally accepted accounting principles.

§12-6-15. Audits.

1 There shall be a continuous postaudit conducted by
2 the legislative auditor of the investment transactions of
3 the board, and a copy thereof for the preceding calendar
4 year shall be furnished to each member of the Legisla-
5 ture on or before the first day of February of each year.
6 The board shall further cause to be conducted a
7 semiannual internal audit of all investment transactions
8 of the board and an annual external audit of all
9 investment transactions of the board: *Provided*, That the
10 board shall on a monthly basis provide to each political
11 subdivision, state agency and any other entity investing
12 moneys in the consolidated investment fund an itemized
13 account reflecting the portfolio value of each said
14 political subdivision, state agency and any other entities'
15 investments in the consolidated investment fund. The
16 board shall further provide a monthly statement
17 reflecting the interest earned by each said political

- 18 subdivision, state agency or other investing entity and
19 the method by which said interest has been calculated.

CHAPTER 18. EDUCATION.

ARTICLE 22D. HIGHER EDUCATION STUDENT ASSISTANCE LOAN PROGRAM.

§18-22D-4. Limitations on investment in linked deposits.

- 1 The state treasurer shall invest in linked deposits as
2 identified by the board through an approved applica-
3 tion, provided that at the time of placement of the linked
4 deposit, exclusive of the linked deposit program pro-
5 vided for in article one-a, chapter twelve of this code,
6 not more than two percent of the state's total investment
7 portfolio is so invested. The total amount initially
8 deposited in any one year shall not exceed two million
9 dollars, and the total amount so deposited at any one
10 time shall not exceed, in the aggregate, twenty million
11 dollars.

CHAPTER 107

(H. B. 2236—By Delegates Moore and Reid)

[Passed March 3, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fourteen and fifteen, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the requirement of the posting of bond or other security to secure the payment of wages and fringe benefits by employers engaged in construction work or in the severance, production or transportation of minerals; providing that certain employers may be exempted therefrom and limiting such exemption; requiring certain reports be filed with commissioner of labor with respect to bonds and the nature and content of such reports; the issuance of certain cease and desist orders by the commissioner and the authority of the commissioner with respect thereto; the manner in which such orders are to be issued and to be served upon

the person affected thereby and the time within which such orders are to be served; providing for judicial review of orders and the venue of such appeals; the time within which such appeals must be taken and certain bonding and other requirements with respect thereto; prohibiting the threatening of or interfering with person authorized to enforce the provision of these sections; and providing penalties for violations.

Be it enacted by the Legislature of West Virginia:

That sections fourteen and fifteen, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-14. Employer's bond for wages and benefits.

§21-5-15. Violations; cease and desist orders and appeals therefrom; criminal penalties.

§21-5-14. Employer's bond for wages and benefits.

1 (a) *Bond required.*—With the exception of those who
2 have been doing business in this state actively and
3 actually engaged in construction work, or the severance,
4 production or transportation of minerals for at least five
5 consecutive years next preceding the posting of the bond
6 required by this section, every employer, person, firm
7 or corporation engaged in or about to engage in
8 construction work, or the severance, production or
9 transportation (excluding railroads and water transpor-
10 ters) of minerals, shall, prior to engaging in any
11 construction work, or the severance, production or
12 transportation of minerals, furnish a bond on a form
13 prescribed by the commissioner, payable to the state of
14 West Virginia, with the condition that the person, firm
15 or corporation pay the wages and fringe benefits of his
16 or its employees when due. The amount of the bond shall
17 be equal to the total of the employer's gross payroll for
18 four weeks at full capacity or production, plus fifteen
19 percent of the said total of employer's gross payroll for
20 four weeks at full capacity or production. The amount
21 of the bond shall increase or decrease as the employer's
22 payroll increases or decreases: *Provided, That the*

23 amount of the bond shall not be decreased, except with
24 the commissioner's approval and determination that
25 there are not outstanding claims against the bond.

26 (b) *Waiver.*—The commissioner shall waive the post-
27 ing of any bond required by subsection (a) of this section
28 upon his determination that an employer is of sufficient
29 financial responsibility to pay wages and fringe benefits.
30 The commissioner shall promulgate rules and regula-
31 tions according to the provisions of chapter twenty-nine-
32 a of this code which prescribe standards for the
33 granting of such waivers.

34 (c) *Form of bond; filing in office of circuit clerk.*—The
35 bond may include, with the approval of the commis-
36 sioner, surety bonding, collateral bonding (including
37 cash and securities), letters of credit, establishment of
38 an escrow account or a combination of these methods.
39 The commissioner shall accept an irrevocable letter of
40 credit in lieu of any other bonding requirement. If
41 collateral bonding is used, the employer may deposit
42 cash, or collateral securities or certificates as follows:
43 Bonds of the United States or its possessions, or of the
44 federal land bank, or of the homeowner's loan corpora-
45 tion; full faith and credit general obligation bonds of the
46 state of West Virginia or other states, and of any county,
47 district or municipality of the state of West Virginia or
48 other states; or certificates of deposit in a bank in this
49 state, which certificates shall be in favor of the state.
50 The cash deposit or market value of such securities or
51 certificates shall be equal to or greater than the sum of
52 the bond. The commissioner shall, upon receipt of any
53 such deposit of cash, securities or certificates, promptly
54 place the same with the state treasurer whose duty it
55 shall be to receive and hold the same in the name of the
56 state in trust for the purpose for which such deposit is
57 made. The employer making the deposit shall be entitled
58 from time to time to receive from the state treasurer,
59 upon the written approval of the commissioner, the
60 whole or any portion of any cash, securities or certifi-
61 cates so deposited, upon depositing with him in lieu
62 thereof, cash or other securities or certificates of the
63 classes herein specified having value equal to or greater

64 than the sum of the bond. The commissioner shall cause
65 a copy of the bond to be filed in the office of the clerk
66 of the county commission of the county wherein the
67 person, firm or corporation is doing business to be
68 available for public inspection.

69 (d) *Employee cause of action.*—Notwithstanding any
70 other provision in this article, any employee, whose
71 wages and fringe benefits are secured by the bond, as
72 specified in subsection (c) of this section, has a direct
73 cause of action against the bond for wages and fringe
74 benefits that are due and unpaid.

75 (e) *Action of commissioner.*—Any employee having
76 wages and fringe benefits unpaid, may inform the
77 commissioner of the claim for unpaid wages and fringe
78 benefits and request certification thereof. If the commis-
79 sioner, upon notice to the employer and investigation,
80 finds that such wages and fringe benefits or a portion
81 thereof are unpaid, he shall make demand of such
82 employer for the payment of such wages and fringe
83 benefits. If payment for such wages and fringe benefits
84 is not forthcoming within the time specified by the
85 commissioner, not to exceed thirty days, the commis-
86 sioner shall certify such claim or portion thereof, and
87 forward the certification to the bonding company or the
88 state treasurer, who shall provide payment to the
89 affected employee within fourteen days of receipt of
90 such certification. The bonding company, or any person,
91 firm or corporation posting a bond, thereafter shall have
92 the right to proceed against a defaulting employer for
93 that part of the claim the employee paid. The procedure
94 specified herein shall not be construed to preclude other
95 actions by the commissioner or employee to seek
96 enforcement of the provisions of this article by any civil
97 proceedings for the payment of wages and fringe
98 benefits or by criminal proceedings as may be deemed
99 appropriate.

100 (f) *Posting and reporting by employer.*—With the
101 exception of those exempt under subsection (a) of this
102 section, any employer who is engaged in construction
103 work or the severance, production or transportation
104 (excluding railroad and water transporters) of minerals

105 shall post the following in a place accessible to his or
106 its employees:

107 (1) A copy of the bond or other evidence of surety
108 specifying the number of employees covered as provided
109 under subsection (a) of this section, or notification that
110 the posting of a bond has been waived by the commis-
111 sioner; and

112 (2) A copy of the notice in the form prescribed by the
113 commissioner regarding the duties of employers under
114 this section. During the first two years that any person,
115 firm or corporation is doing business in this state in
116 construction work, or in the severance, production or
117 transportation of minerals, such person, firm or corpo-
118 ration shall on or before the first day of February, May,
119 August and November of each calendar year file with
120 the department a verified statement of the number of
121 employees, or a copy of the quarterly report filed with
122 the department of employment security showing the
123 accurate number of employees, unless the commissioner
124 waives the filing of the report upon his determination
125 that the person, firm or corporation is of sufficient
126 stability that the reporting is unnecessary.

127 (g) *Termination of bond.*—The bond may be termi-
128 nated, with the approval of the commissioner, after an
129 employer submits a statement, under oath or affirma-
130 tion lawfully administered, to the commissioner that the
131 following has occurred: The employer has ceased doing
132 business and all wages and fringe benefits have been
133 paid, or the employer has been doing business in this
134 state for at least five consecutive years and has paid all
135 wages and fringe benefits. The approval of the commis-
136 sioner will be granted only after the commissioner has
137 determined that the wages and fringe benefits of all
138 employees have been paid. The bond may also be
139 terminated upon a determination by the commissioner
140 that an employer is of sufficient financial responsibility
141 to pay wages and fringe benefits.

§21-5-15. Violations; cease and desist orders and appeals therefrom; criminal penalties.

1 (a) Any person, firm or corporation who knowingly

2 and willfully fails to provide and maintain an adequate
3 bond as required by section fourteen of this article is
4 guilty of a misdemeanor, and, upon conviction thereof,
5 shall be fined not less than two hundred dollars nor
6 more than five thousand dollars, or imprisoned in the
7 county jail not more than one month, or both fined and
8 imprisoned.

9 (b) Any person, firm or corporation who knowingly,
10 willfully and fraudulently disposes of or relocates assets
11 with intent to deprive employees of their wages and
12 fringe benefits is guilty of a felony, and, upon conviction
13 thereof, shall be fined not less than five thousand dollars
14 nor more than thirty thousand dollars, or imprisoned in
15 the penitentiary not less than one nor more than three
16 years, or both fined and imprisoned.

17 (c) (1) At any time the commissioner determines that
18 a person, firm or corporation has not provided or
19 maintained an adequate bond, as required by section
20 fourteen of this article, the commissioner shall issue a
21 cease and desist order which is to be issued and posted
22 requiring that said person, firm or corporation either
23 post an adequate bond or cease further operations in this
24 state within a period specified by the commissioner;
25 which period shall be not less than five nor more than
26 fourteen days. The cease and desist order may be issued
27 by the commissioner at his own instance or at his
28 direction, with or without application to or the approval
29 of any other officer, agent, department or employee of
30 the state or application to any court for approval thereof.
31 Any person, firm or corporation who continues to
32 engage in construction work or the severance, produc-
33 tion or transportation of minerals without an approved
34 bond after such specified period shall be guilty of a
35 felony, and, upon conviction thereof, shall be fined not
36 less than five thousand dollars nor more than thirty
37 thousand dollars, or imprisoned in the penitentiary not
38 less than one nor more than three years, or both fined
39 and imprisoned. Any cease and desist order issued by
40 the commissioner pursuant to this subsection may be
41 directed by the commissioner to the sheriff of the county
42 wherein the business activity of which the order is the

43 subject, or to any officer or employee of the department,
44 commanding such sheriff, officer or employee to serve
45 such order upon the business in question within seventy-
46 two hours and to make proper return thereof.

47 (2) Any other provision of law to the contrary notwith-
48 standing, any person against whom a cease and desist
49 order has been directed shall be entitled to judicial
50 review thereof by filing a verified petition taking an
51 appeal therefrom within fifteen days from the date of
52 service of such order. Such verified petition shall be
53 filed in the circuit court of the county wherein service
54 of the order was completed, at the option of the
55 petitioner, or, in the circuit court of Kanawha County,
56 West Virginia. If the appeal is not perfected within such
57 fifteen day period, the cease and desist order shall be
58 final and shall not thereafter be subject to judicial
59 review. No appeal shall be deemed to have been
60 perfected except upon the filing with the clerk of the
61 circuit court of the county wherein the appeal is taken,
62 of a bond or other security to be approved by the court,
63 in an amount of not less than the amount of the bond
64 otherwise required to be posted under the provisions of
65 section fourteen of this article. The person so filing a
66 petition of appeal shall cause a copy of the petition and
67 bond or other posted security to be served upon the
68 commissioner by certified mail, return receipt re-
69 quested, within seven days after the date upon which the
70 petition for appeal is filed.

71 (d) Any person who threatens any officer, agent or
72 employee of the department or other person authorized
73 to assist the commissioner in the performance of his
74 duties under any provision of section fourteen of this
75 article or of this section or who shall interfere with or
76 attempt to prevent any such officer, agent, employee or
77 other person in the performance of such duties shall be
78 guilty of a felony, and, upon conviction thereof, shall be
79 fined in an amount of not less than one thousand dollars
80 nor more than three thousand dollars or imprisoned in
81 the penitentiary not less than one nor more than three
82 years, or both such fine and imprisonment.

CHAPTER 108

(S. B. 75—By Senator Warner)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article five by adding thereto a new section, designated section eighteen, relating to prohibiting employers from discharging employees for time lost by volunteer firemen in performing emergency services in connection with hazardous and toxic materials spills and cleanups; and prohibiting employers from discharging employees for time lost as emergency medical service personnel.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article five be further amended by adding thereto a new section, designated section eighteen, all to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-17. Employers prohibited from discharging employees for time lost as volunteer firemen.

§21-5-18. Employers prohibited from discharging employees for time lost as emergency medical service personnel.

§21-5-17. Employers prohibited from discharging employees for time lost as volunteer firemen.

1 No employer may terminate an employee who is a
2 member of a volunteer fire department and who, in the
3 line of emergency duty as a volunteer fireman, responds
4 to an emergency call prior to the time he is due to report
5 for work and which emergency results in a loss of time
6 from his employment.

7 Any time lost from employment as provided in this
8 section may be charged against the employee's regular
9 pay.

10 At the request of an employer, any employee losing
11 time as provided herein shall supply his employer with
12 a statement from the chief of the volunteer fire
13 department stating that the employee responded to an
14 emergency call and the time thereof.

15 As used in this section, "emergency" shall mean going
16 to, attending to or coming from (1) an actual fire call
17 to prevent the imminent loss of life or property, or (2)
18 a hazardous or toxic materials spill and cleanup. The
19 term "employer" includes any individual, partnership,
20 association, corporation, business trust or any person or
21 group of persons acting directly or indirectly in the
22 interest of an employer in relation to any employee.

23 Any employer who willfully and knowingly violates
24 the provisions of this section shall be required to
25 reinstate such employee to his former position and shall
26 be required to pay such employee all lost wages and
27 benefits for the period between termination and rein-
28 statement. Any action to enforce the provisions of this
29 section shall be commenced within a period of one year
30 after the date of violation and such action shall be
31 commenced in the circuit court of the county wherein
32 the place of employment is located.

**§21-5-18. Employers prohibited from discharging em-
ployees for time lost as emergency medical
service personnel.**

1 No employer may terminate an employee who is a
2 member of an emergency medical service and who, in
3 the line of emergency duty as an emergency medical
4 service member, responds to an emergency call prior to
5 the time he is due to report for work and which
6 emergency results in a loss of time from his
7 employment.

8 Any time lost from employment as provided in this
9 section may be charged against the employee's regular
10 pay.

11 At the request of an employer, any employee losing
12 time as provided herein shall supply his employer with
13 a statement from the director of health stating that the
14 employee responded to an emergency call and the time
15 thereof.

16 As used in this section, "emergency" shall mean going
17 to or coming from an actual medical emergency to
18 prevent the imminent loss of life. The term "employer"
19 includes any individual, partnership, association,
20 corporation, business trust or any person or group of
21 persons acting directly or indirectly in the interest of an
22 employer in relation to any employee.

23 Any employer who willfully and knowingly violates
24 the provisions of this section shall be required to
25 reinstate such employee to his former position and shall
26 be required to pay such employee all lost wages and
27 benefits for the period between termination and rein-
28 statement. Any action to enforce the provisions of this
29 section shall be commenced within a period of one year
30 after the date of violation and such action shall be
31 commenced in the circuit court of the county wherein
32 the place of employment is located.

CHAPTER 109

(Com. Sub. for S. B. 251—By Senator Pritt)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-d, relating to parental leave generally; legislative findings; definitions; scope; position upon return from leave; seniority and employment benefits; and notice.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by

adding thereto a new article, designated article five-d, to read as follows:

ARTICLE 5D. THE PARENTAL LEAVE ACT.

- §21-5D-1. Legislative findings.
- §21-5D-2. Definitions.
- §21-5D-3. Scope.
- §21-5D-4. Family leave.
- §21-5D-5. Certification.
- §21-5D-6. Position upon return from leave.
- §21-5D-7. Seniority and employment benefits.
- §21-5D-8. Prohibited acts.
- §21-5D-9. Posting notice.

§21-5D-1. Legislative findings.

- 1 The Legislature hereby finds that there is a growing
- 2 crisis in this country and state affecting the stability of
- 3 our families, that the family unit is being torn apart due
- 4 to the need for families to have two income producing
- 5 parents. In order to address this situation and to provide
- 6 for the love, nurturing and education of our children, the
- 7 Legislature hereby enacts "The Parental Leave Act."

§21-5D-2. Definitions.

- 1 As used in this article:

- 2 (a) "Commissioner" means the commissioner of the
- 3 department of labor.

- 4 (b) "Dependent" means any person who is living with
- 5 or dependent upon the income of any employee whether
- 6 related by blood or not.

- 7 (c) *Employee*.—

- 8 (1) "Employee" means any individual, hired for
- 9 permanent employment, who has worked for at least
- 10 twelve consecutive weeks performing services for
- 11 remuneration within this state for any department,
- 12 division, board, bureau, agency, commission or other
- 13 unit of state government, or any county board of
- 14 education in the state.

- 15 (2) "Employee" does not include:

16 (A) Individuals employed by persons who are not
17 “employers” as defined by this article;

18 (B) Elected public officials or the members of their
19 immediate personal staffs;

20 (C) Principal administrative officers of any depart-
21 ment, division, board, bureau, agency, commission or
22 other unit of state government, or any county board of
23 education in the state; or

24 (D) A person in a vocational rehabilitation facility
25 certified under federal law who has been designated an
26 evaluatee, trainee or work activity client.

27 (d) *Employer*.—“Employer” includes any department,
28 division, board, bureau, agency, commission or other
29 unit of state government and any county board of
30 education in the state.

31 (e) “Employment benefits” means all benefits, other
32 than salary or wages, provided or made available to
33 employees by an employer, and includes group life
34 insurance, health insurance, disability insurance, sick
35 leave, annual leave, educational benefits and pensions,
36 regardless of whether such benefits are provided by a
37 policy or practice of an employer or by an employee
38 benefit plan as defined in the federal Employee
39 Retirement Income Security Act of 1974.

40 (f) The term “health care” or “health care services”
41 means clinically related preventive, diagnostic, treat-
42 ment or rehabilitative services whether provided in the
43 home, office, hospital, clinic or any other suitable place,
44 provided or prescribed by any health care provider or
45 providers. Such services include, among others, drugs
46 and medical supplies, appliances, laboratory, preven-
47 tive, diagnostic, therapeutic and rehabilitative services,
48 hospital care, nursing home and convalescent care,
49 medical physicians, osteopathic physicians, chiropractic
50 physicians, and such other surgical, dental, nursing,
51 pharmaceutical, and podiatric services and supplies as
52 may be prescribed by such health care providers.

53 (g) “Health care provider” means a person, partner-

54 ship, corporation, facility or institution licensed,
55 certified or authorized by law to provide professional
56 health care services in this state to an individual during
57 this individual's medical care, treatment or
58 confinement.

59 (h) "Parent" means a biological, foster or adoptive
60 parent, a stepparent or a legal guardian.

61 (i) "Serious health condition" means a physical or
62 mental illness, injury or impairment which involves:

63 (1) Inpatient care in a hospital, hospice or residential
64 health care facility; or

65 (2) Continuing treatment, health care or continuing
66 supervision by a health care provider.

67 (j) "Son" or "daughter" means an individual who is a
68 biological, adopted or foster child, a stepchild or a legal
69 ward, and is (1) under eighteen years of age; or (2)
70 eighteen years of age or older and incapable of self-care
71 because of mental or physical disability.

72 (k) "Spouse" means any person legally married to an
73 "employee" covered under this article.

§21-5D-3. Scope.

1 Nothing in this article prohibits an employer from
2 providing employees with rights to family leave which
3 are more generous to the employee than the rights
4 provided under this article.

§21-5D-4. Family leave.

1 (a) An employee shall be entitled to a total of twelve
2 weeks of unpaid family leave, following the exhaustion
3 of all his or her annual and personal leave, during any
4 twelve-month period:

5 (1) Because of the birth of a son or daughter of the
6 employee;

7 (2) Because of the placement of a son or daughter with
8 the employee for adoption; or

9 (3) In order to care for the employee's son, daughter,
10 spouse, parent or dependent who has a serious health
11 condition.

12 (b) In the case of a son, daughter, spouse, parent or
13 dependent who has a serious health condition, such
14 family leave may be taken intermittently when medi-
15 cally necessary.

16 (c) An employee may take family leave on a part-time
17 basis and on a part-time leave schedule, but the period
18 during which the number of work weeks of leave may
19 be taken may not exceed twelve consecutive months, and
20 such leave shall be scheduled so as not to disrupt unduly
21 the operations of the employer.

22 (d) (1) If a leave because of birth or adoption is
23 foreseeable, the employee shall provide the employer
24 with two weeks written notice of such expected birth or
25 adoption.

26 (2) If a leave under this section is foreseeable because
27 of planned medical treatment or supervision, the
28 employee:

29 (A) Shall make a reasonable effort to schedule the
30 treatment or supervision so as not to disrupt unduly the
31 operations of the employer, subject to the approval of the
32 health care provider of the employee's son, daughter,
33 parent or dependent; and

34 (B) Shall provide the employer with two weeks
35 written notice of the treatment or supervision.

36 (e) This article shall not be construed as granting an
37 employee the family leave rights provided in this section
38 if he or she is entitled to such family leave rights under
39 any other provision of this code.

§21-5D-5. Certification.

1 (a) If an employee requests family leave to care for
2 a family member with a serious health condition as
3 authorized in this article, the employer may require the
4 employee to provide certification by a health care
5 provider of the health condition.

6 (b) The certification shall be sufficient if it contains
7 the following:

8 (1) That the child, dependent, parent or employee has
9 a serious health condition;

10 (2) The date the serious health condition commenced
11 and its probable duration; and

12 (3) The medical facts regarding the serious health
13 condition.

§21-5D-6. Position upon return from leave.

1 (a) The position held by the employee immediately
2 before the leave is commenced shall be held upon a
3 period not to exceed the twelve-week period of the
4 parental leave and the employee shall be returned to
5 that position: *Provided*, That the employer may employ
6 a temporary employee or temporary employees to fill
7 said position for the period of the parental leave.

8 (b) No employer may, because an employee received
9 family leave or medical leave, reduce or deny any
10 employment benefit or seniority which accrued to the
11 employee before his or her leave commenced.

§21-5D-7. Seniority and employment benefits.

1 (a) Nothing in this section entitles any returning
2 employee to the accrual of any seniority or employment
3 benefits during any period of family leave.

4 (b) During any family leave by an employee, the
5 employer shall continue group health insurance cover-
6 age for such employee: *Provided*, That the employee
7 shall pay the employer the premium costs of such group
8 health insurance coverage.

§21-5D-8. Prohibited acts.

1 No person may interfere with, restrain or deny the
2 exercise of any right provided under this article.

§21-5D-9. Posting notice.

1 Each employer shall post, in one or more conspicuous
2 places where notices to employees are customarily
3 posted, a notice in a form approved by the department
4 setting forth an employee's rights under this article.

CHAPTER 110

(H. B. 2853—By Delegate Humphreys)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to legislative authorization of legislative rules proposed by various executive agencies following review by the legislative rule-making review committee and recommended by the legislative rule-making review committee as filed, with modifications as filed, as amended, or as directed and authorized; declaration by the Legislature of legislative rules authorized as complying with the intent of the statute under which the legislative rule was proposed.

Be it enacted by the Legislature of West Virginia:

That chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

CHAPTER 64. LEGISLATIVE RULES.

Article

1. General Legislative Authorization.
2. Executive Agency Authorization to Promulgate Legislative Rules.

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

- §64-1-1. Legislative authorization.
§64-1-2. Effective date of rules.
§64-1-3. Technical deficiencies waived.

§64-1-1. Legislative authorization.

- 1 Under the provisions of article three, chapter twenty-
- 2 nine-a of the code of West Virginia, the Legislature
- 3 expressly authorizes the promulgation of the rules
- 4 described in article two of this chapter, subject only to
- 5 the limitations set forth with respect to each such rule
- 6 in the section or sections of this chapter authorizing its
- 7 promulgation. The Legislature further declares that all
- 8 rules now or hereafter authorized under article two of
- 9 this chapter are within the legislative intent of the

- 10 statute which the rule is intended to implement, extend,
11 apply or interpret.

§64-1-2. Effective date of rules.

- 1 The effective date of the legislative rules authorized
2 in article two of this chapter shall be governed by the
3 provisions of section thirteen, article three, chapter
4 twenty-nine-a, unless the agency promulgating the rules
5 establishes an effective date which is earlier than that
6 provided by section thirteen, article three, chapter
7 twenty-nine-a, in which case the effective date estab-
8 lished by the agency shall control, unless the Legislature
9 in the bill authorizing the rules establishes an effective
10 date for such rules in which case the effective date
11 established by the Legislature shall control.

§64-1-3. Technical deficiencies waived.

- 1 The Legislature further declares each legislative rule
2 now or hereafter authorized under article two of this
3 chapter to have been validly promulgated notwithstand-
4 ing any failure to comply with any requirement of
5 chapter twenty-nine-a for the promulgation of rules at
6 any stage of the promulgation process prior to author-
7 ization by the Legislature in article two of this chapter.

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

- §64-2-1. State board of health; director of health.
§64-2-2. State tax commissioner.
§64-2-3. State board of investments.
§64-2-4. West Virginia health care cost review authority.
§64-2-5. Commissioner of highways.
§64-2-6. Commissioner of motor vehicles.
§64-2-7. Department of natural resources.
§64-2-8. Department of energy.
§64-2-9. Department of labor.
§64-2-10. Insurance commissioner.
§64-2-11. Attorney general.
§64-2-12. West Virginia library commission.
§64-2-13. State treasurer.
§64-2-14. Department of public safety.
§64-2-15. Air pollution control commission.
§64-2-16. West Virginia hospital finance authority.
§64-2-17. Teachers retirement board.
§64-2-18. Commissioner of agriculture.
§64-2-19. West Virginia racing commission.

- §64-2-20. Water resources board.
- §64-2-21. Workers' compensation commissioner.
- §64-2-22. State lottery commission.
- §64-2-23. State fire commission.
- §64-2-24. Civil service commission.
- §64-2-25. Secretary of state.
- §64-2-26. West Virginia state board of registration for professional engineers.
- §64-2-27. State board of examiners of land surveyors.
- §64-2-28. State boards of examination or registration; West Virginia board of chiropractic examiners.
- §64-2-29. Radiologic technology board of examiners.
- §64-2-30. Board of medicine.
- §64-2-31. Board of embalmers and funeral directors.
- §64-2-32. Board of examiners for registered professional nurses.
- §64-2-33. West Virginia board of examiners for licensed practical nurses.
- §64-2-34. West Virginia housing development fund.
- §64-2-35. Jail and prison standards commission.
- §64-2-36. Commissioner of banking.
- §64-2-37. State auditor.
- §64-2-38. Board of risk and insurance management.
- §64-2-39. Department of human services; director of the child advocate office.
- §64-2-40. Public employees insurance board.
- §64-2-41. Employee suggestion award board.
- §64-2-42. Commissioner of commerce.
- §64-2-43. West Virginia industrial and trade jobs development corporation.
- §64-2-44. Alcohol beverage control commission.
- §64-2-45. West Virginia board of hearing aid dealers.
- §64-2-46. Nursing home administrators licensing board.
- §64-2-47. Board of examiners of psychologist.
- §64-2-48. Board of pharmacy.
- §64-2-49. State athletic commission.
- §64-2-50. Archives and history commission.
- §64-2-51. Water development authority.
- §64-2-52. Beef industry self-improvement assessment board.
- §64-2-53. Commercial whitewater advisory board.
- §64-2-54. Commissioner of the department of corrections.
- §64-2-55. Governor's committee on crime, delinquency and corrections.
- §64-2-56. Structural barriers compliance board.
- §64-2-57. Department of finance and administration.
- §64-2-58. Enterprise zone authority.
- §64-2-59. Board of barbers and beauticians.

§64-2-1. State board of health; director of health.

- 1 (a) The legislative rules filed in the state register on
- 2 the second day of June, one thousand nine hundred
- 3 eighty-two, relating to the state board of health (waste
- 4 water treatment works operations) are authorized.
- 5 (b) The legislative rules filed in the state register on

6 the second day of June, one thousand nine hundred
7 eighty-two, relating to the state board of health
8 (laboratory reporting of syphilis and gonorrhea) are
9 authorized.

10 (c) The legislative rules filed in the state register on
11 the second day of June, one thousand nine hundred
12 eighty-two, relating to the state board of health (public
13 water supply operators) with the modification of §11.02
14 as presented to the legislative rule-making review
15 committee on the ninth day of November, one thousand
16 nine hundred eighty-two, are authorized.

17 (d) The legislative rules filed in the state register on
18 the twenty-second day of October, one thousand nine
19 hundred eighty-two, relating to the state board of health
20 (sewage systems) with the modification presented to the
21 legislative rule-making review committee on the sixth
22 day of December, one thousand nine hundred eighty-
23 two, are authorized except lines ten through seventeen,
24 page eight of the rules shall be stricken in their entirety
25 and the remaining paragraphs renumbered.

26 (e) The legislative rules filed in the state register on
27 the second day of June, one thousand nine hundred
28 eighty-two, relating to the state board of health
29 (approval of laboratories) are authorized.

30 (f) The legislative rules filed in the state register on
31 the twenty-fourth day of November, one thousand nine
32 hundred eighty-two, relating to the state board of health
33 (permit fees) are authorized.

34 (g) The legislative rules filed in the state register on
35 the third day of June, one thousand nine hundred eighty-
36 two, relating to the state board of health (certificate of
37 need) are authorized.

38 (h) The legislative rules filed in the state register on
39 the sixteenth day of August, one thousand nine hundred
40 eighty-two, relating to the state board of health (eyes of
41 newborn children) are authorized.

42 (i) The legislative rules filed in the state register on
43 the thirteenth day of August, one thousand nine hundred
44 eighty-two, and filed with amendments on the eleventh

45 day of January, one thousand nine hundred eighty-three,
46 relating to the state board of health (nursing home
47 licensure), are authorized with the amendment of
48 §5.15.02 of those rules as set forth below:

49 By striking the word "and" at the end of subdivision
50 (f), by changing the period at the end of subdivision
51 (g) to a semicolon, and by adding the following after
52 subdivision (g): "(h) one (1) member who represents
53 social work services."

54 (j) The legislative rules filed in the state register on
55 the twenty-fourth day of November, one thousand nine
56 hundred eighty-two, relating to the state board of health
57 (guardianship service), are authorized with the excep-
58 tion of section 9.3 of those rules which may not be
59 promulgated.

60 (k) The legislative rules filed in the state register on
61 the third day of June, one thousand nine hundred eighty-
62 two, relating to the state board of health (controlled
63 substances research program and certification) are
64 authorized.

65 (l) The legislative rules filed in the state register on
66 the fifth day of November, one thousand nine hundred
67 eighty-two, relating to the state board of health
68 (chemical test for intoxication) are authorized.

69 (m) The legislative rules filed in the state register on
70 the nineteenth day of December, one thousand nine
71 hundred eighty-three, relating to the state board of
72 health (birthing center licensure) are authorized.

73 (n) The legislative rules filed in the state register on
74 the fourteenth day of November, one thousand nine
75 hundred eighty-three, relating to the state board of
76 health (licensure of behavioral health centers), are
77 authorized with the amendments set forth below:

78 Page 45, §12.8.2. In the first sentence delete the words
79 "without delay" and insert in lieu thereof the words
80 "within twenty-four hours after receiving a report of a
81 complaint."

82 (o) The legislative rules filed in the state register on

83 the nineteenth day of December, one thousand nine
84 hundred eighty-three, relating to the state board of
85 health (procedures for recovery of corneal tissue for
86 transplant) are authorized.

87 (p) The legislative rules filed in the state register on
88 the seventh day of September, one thousand nine
89 hundred eighty-three, relating to the state board of
90 health (well water regulations) are authorized with the
91 amendments set forth below:

92 §4.1. In the first sentence delete the word "obtaining"
93 and insert in lieu thereof the words "applying for." In
94 the second sentence after "4.3" add "and 4.5."

95 §4.2. At the end of the second sentence, strike the
96 period and add the words "unless emergency conditions
97 prevail as noted under §4.3."

98 With the balance of §4.2 and create a new §4.3 with
99 the following changes: In the first sentence delete the
100 word "deadline" and insert in lieu thereof the word
101 "requirements." Add after the first sentence the
102 sentence, "Emergency conditions and unavoidable
103 circumstances are those conditions involving acts of God,
104 water outages or disruption of water service, unsatisfac-
105 tory water quality or quantity or public health threats."
106 In the third sentence delete the word "exceed" and insert
107 in lieu thereof the words "be made in excess of."

108 Renumber §4.3 as §4.4 and add the following two
109 sentences at the end of the section: "Such standards shall
110 constitute the minimum standards for the installation,
111 the alteration or the deepening of water wells. Any plans
112 approved by the director pursuant to these regulations
113 shall be in substantial compliance with the heretofore
114 mentioned standards."

115 Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7, §4.7
116 as §4.8 and §4.8 as §4.9.

117 §5.2. Delete the words "four (4)" and insert in lieu
118 thereof the words "two (2)" and delete the words "active,
119 continuous."

120 (q) The legislative rules filed in the state register on

121 the third day of October, one thousand nine hundred
122 eighty-four, relating to the state board of health (trauma
123 center or facility designation), are authorized.

124 (r) The legislative rules filed in the state register on
125 the twenty-first day of December, one thousand nine
126 hundred eighty-four, relating to the state board of
127 health (reportable diseases) are authorized.

128 (s) The legislative rules filed in the state register on
129 the twenty-first day of December, one thousand nine
130 hundred eighty-four, relating to the state board of
131 health (licensure of medical adult day care centers) are
132 authorized.

133 (t) The legislative rules filed in the state register on
134 the third day of October, one thousand nine hundred
135 eighty-four, relating to the state board of health (retail
136 food store sanitation) are authorized.

137 (u) The legislative rules filed in the state register on
138 the seventeenth day of December, one thousand nine
139 hundred eighty-five, modified by the director of health
140 to meet the objections of the legislative rule-making
141 review committee and refiled in the state register on the
142 fifteenth day of January, one thousand nine hundred
143 eighty-six, relating to the director of health (adult group
144 home licensure) are authorized.

145 (v) The legislative rules filed in the state register on
146 the twenty-ninth day of October, one thousand nine
147 hundred eighty-five, modified by the state board of
148 health to meet the objections of the legislative rule-
149 making review committee and refiled in the state
150 register on the twenty-seventh day of December, one
151 thousand nine hundred eighty-five, relating to the state
152 board of health (licensure of hospice care programs) are
153 authorized.

154 (w) The legislative rules filed in the state register on
155 the thirty-first day of October, one thousand nine
156 hundred eighty-five, modified by the director of health
157 to meet the objections of the legislative rule-making
158 review committee and refiled in the state register on the
159 twenty-seventh day of December, one thousand nine

160 hundred eighty-five, relating to the director of health
161 (rules governing emergency medical services) are
162 authorized with the amendments set forth below:

163 On page 3, §3.9 shall read as follows:

164 "3.9 Quorum—When applied to the EMSAC, a major-
165 ity of the members thereof, except in the instance when
166 at any meeting of the EMSAC, where a quorum is not
167 present and the director causes to be deposited in the
168 United States mail, postage prepaid, return receipt
169 requested, to each member of the EMSAC within three
170 days, a notice calling a meeting of the EMSAC at some
171 convenient place in the state of West Virginia two weeks
172 after the meeting at which no quorum was present.
173 Quorum means any number of members of the EMSAC
174 who attend such subsequent meeting. Any member
175 missing two consecutive meetings shall be removed from
176 the EMSAC."

177 On page 6, §4.7.1 shall be deleted in its entirety, and

178 On page 7, §4.10.1 shall read as follows:

179 "4.10.1 every applicant for certification as an EMSP
180 prior to such certification, shall demonstrate his or her
181 knowledge and ability by undergoing a written exam-
182 ination and a demonstration of skills, and by attaining
183 a passing score on the same. Passing score shall be the
184 same for all testing programs.

185 (x) The legislative rules filed in the state register on
186 the fifth day of September, one thousand nine hundred
187 eighty-five, relating to the state department of health
188 (revising the list of hazardous substances) are
189 authorized.

190 (y) The legislative rules filed in the state register on
191 the thirteenth day of August, one thousand nine hundred
192 eighty-six, modified by the director of the department
193 of health to meet the objections of the legislative rule-
194 making review committee and refiled in the state
195 register on the sixteenth of October, one thousand nine
196 hundred eighty-six, relating to the director of the
197 department of health (hazardous material treatment
198 information repository), are authorized.

199 (z) The legislative rules filed in the state register on
200 the seventeenth day of July, one thousand nine hundred
201 eighty-six, modified by the state board of health to meet
202 the objections of the legislative rule-making review
203 committee and refiled in the state register on the
204 sixteenth day of October, one thousand nine hundred
205 eighty-six, relating to the state board of health (methods
206 and standards for chemical tests for intoxication) are
207 authorized.

208 (aa) The legislative rules filed in the state register
209 on the twenty-first day of November, one thousand nine
210 hundred eighty-six, modified by the state board of
211 health to meet the objections of the legislative rule-
212 making review committee and refiled in the state
213 register on the twenty-third day of December, one
214 thousand nine hundred eighty-six, relating to the state
215 board of health (licensure of behavioral health centers),
216 are authorized.

217 (bb) The legislative rules filed in the state register on
218 the eighteenth day of April, one thousand nine hundred
219 eighty-six, modified by the state board of health to meet
220 the objections of the legislative rule-making review
221 committee and refiled in the state register on the
222 seventeenth day of October, one thousand nine hundred
223 eighty-six, relating to the state board of health (hospital
224 licensure), are authorized.

225 (cc) The legislative rules filed in the state register on
226 the ninth day of December, one thousand nine hundred
227 eighty-six, modified by the state board of health to meet
228 the objections of the legislative rule-making review
229 committee and refiled in the state register on the
230 twenty-third day of December, one thousand nine
231 hundred eighty-six, relating to the state board of health
232 (hospital licensure and allowing hospitals to have
233 licensed hospital professionals, other than licensed
234 physicians, on their medical staff), are authorized.

235 (dd) The legislative rules filed in the state register on
236 the ninth day of December, one thousand nine hundred
237 eighty-six, modified by the state board of health to meet
238 the objections of the legislative rule-making review

239 committee and refiled in the state register on the
240 twenty-third day of December, one thousand nine
241 hundred eighty-six, relating to the state board of health
242 (vital statistics), are authorized.

243 (ee) The legislative rules filed in the state register on
244 the eleventh day of September, one thousand nine
245 hundred eighty-seven, relating to the director of the
246 department of health (immunization criteria for
247 transfer students) are authorized.

248 (ff) The legislative rules filed in the state register on
249 the sixteenth day of November, one thousand nine
250 hundred eighty-seven, relating to the director of the
251 department of health (hazardous substances) are auth-
252 orized with the amendment set forth below:

253 Page 33, section 8, line 8 (unnumbered) by adding at
254 the end of section 8 the following proviso: "*Provided,*
255 That the owner's or operator's submissions are based on
256 the threshold reporting requirements contained in
257 section 5, article 31, chapter 16."

258 (gg) The legislative rules filed in the state register on
259 the eighteenth day of November, one thousand nine
260 hundred eighty-seven, relating to the director of the
261 department of health (trauma center or facility desig-
262 nation) are authorized.

263 (hh) The legislative rules filed in the state register on
264 the twenty-second day of June, one thousand nine
265 hundred eighty-eight, modified by the state board of
266 health to meet the objections of the legislative rule-
267 making review committee and refiled in the state
268 register on the fifteenth day of September, one thousand
269 nine hundred eighty-eight, relating to the state board of
270 health (licensure of hospice care programs) are
271 authorized.

272 (ii) The legislative rules filed in the state register on
273 the fifteenth day of September, one thousand nine
274 hundred eighty-eight, modified by the state board of
275 health to meet the objections of the legislative rule-
276 making review committee and refiled in the state
277 register on the third day of November, one thousand

278 nine hundred eighty-eight, relating to the state board of
279 health (water wells) are authorized with amendment set
280 forth below:

281 On page 2, §3.8, shall read as follows:

282 3.8 Water Well—Any excavation or penetration in the
283 ground, whether drilled, bored, cored, driven or jetted
284 that enters or passes through an aquifer for purposes
285 that may include but are not limited to: a water supply,
286 exploration for water, dewatering or heat pump wells,
287 except that this definition shall not include ground
288 water monitoring activities and all activities for the
289 exploration, development, production, storage and
290 recovery of coal, oil and gas and other mineral resources
291 which are regulated under chapter 22, 22a or 22b of the
292 code.

293 (jj) The legislative rules filed in the state register on
294 the twenty-second day of June, one thousand nine
295 hundred eighty-eight, modified by the state board of
296 health to meet the objections of the legislative rule-
297 making review committee and refiled in the state
298 register on the fifteenth day of September, one thousand
299 nine hundred eighty-eight, relating to the state board of
300 health (plumbing requirements) are authorized.

301 (kk) The legislative rules filed in the state register on
302 the twenty-second day of June, one thousand nine
303 hundred eighty-eight, modified by the state board of
304 health to meet the objections of the legislative rule-
305 making review committee and refiled in the state
306 register on the fifteenth day of September, one thousand
307 nine hundred eighty-eight, relating to the state board of
308 health (public water supply operators) are authorized.

309 (ll) The legislative rules filed in the state register on
310 the nineteenth day of October, one thousand nine
311 hundred eighty-eight, modified by the state board of
312 health to meet the objections of the legislative rule-
313 making review committee and refiled in the state
314 register on the twentieth day of December, one thousand
315 nine hundred eighty-eight, relating to the state board of
316 health (volatile synthetic organic chemicals) are autho-
317 rized.

§64-2-2. State tax commissioner.

1 (a) The legislative rules filed in the state register on
2 the fifth day of January, one thousand nine hundred
3 eighty-four, relating to the state tax commissioner
4 (appraisal of property for periodic statewide reapprai-
5 sals for ad valorem property tax purposes), are autho-
6 rized with the amendments set forth below:

7 Page 8, section 11.04 (b)(2), definition of "Active
8 Mining Property," at the end of the first paragraph
9 following the "period," by adding the following: "In the
10 application of the herein provided valuation formula on
11 'active mining property,' the appropriate formula
12 calculation will be based upon the actual market to
13 which the coal from that tract and seam is currently
14 being sold, whether it is 'metallurgical' or 'steam'."

15 Page 9, section 11.04 (b)(3), definition of "Active
16 Reserves," at the end of the subsection, following the
17 "period," by adding the following: "In the application of
18 the herein provided valuation formula on 'active
19 reserves,' the appropriate formula calculation will be
20 based upon the actual market to which the coal from
21 that tract and seam is currently being sold, whether it
22 is 'metallurgical' or 'steam'."

23 Page 11, section 11.04 (b)(11), definition of "Mineable
24 Coal," by striking the subsection and substituting in lieu
25 thereof the following: "(11) Mineable Coal. Coal which
26 can be mined under present day mining technology and
27 economics."

28 Page 25, section 11.04 (c)(2)(C), entitled "Property Tax
29 Component," by striking the subsection and inserting in
30 lieu thereof the following: "(C) **Property Tax Compo-**
31 **nent**—This component will be derived by multiplying
32 the assessment rate by the statewide average of tax
33 rates on Class III property."

34 Page 30, section 11.04 (c)(4), entitled "Valuation of
35 Mined-Out/Unmineable/Barren Coal Properties," by
36 striking the numbers "\$5.00" and inserting in lieu
37 thereof the following: "\$1.00."

38 Page 31, section 11.04 (c)(5)(B), by striking the words

39 and numbers "Five Dollars (\$5.00)" and inserting in lieu
40 thereof the following: "One Dollar (\$1.00)."

41 Page 53, section 11.05 (h) by striking the symbol and
42 figures "\$5.00" and inserting in lieu the following:
43 "\$1.00)."

44 Page 73, section 11.06 (h) by striking the symbol and
45 figures "\$5.00" and inserting in lieu the following:
46 "\$1.00."

47 Page 81, section 11.07 (e)(15)(B)(4) at the end of the
48 second sentence remove the period after the word
49 "property" and insert the words "unless the land is used
50 for some other purpose in which case it will be taxed
51 according to its actual use."

52 Page 86, section 11.07 (k) delete all of subsection (k).

53 Page 110, section 11.08 (c)(4) by striking the symbol
54 and figures "\$5.00" and inserting in lieu thereof the
55 following: "\$1.00."

56 Page 111, section 11.08 (c)(5)(B) by striking the
57 symbol and figures "\$5.00" and inserting in lieu thereof
58 the following: "\$1.00."

59 Page 115, section 11.09 (a)(3) in the first sentence,
60 insert after the word "land" the words "excluding farm
61 land."

62 (b) The legislative rules filed in the state register on
63 the twenty-eighth day of September, one thousand nine
64 hundred eighty-four, relating to the state tax commis-
65 sioner (estimated personal income tax), are authorized
66 with the amendments set forth below:

67 55.02(a)(2)(on page 182.2) line 18, after the word
68 "profession" strike the words "on his own account" and
69 the comma(,).

70 55.12(b)(1)(page 182.35) at the end of the section,
71 change the period to a comma, and add the following
72 language: "and in the case of a court appointed agent,
73 a copy of the court order of appointment is sufficient."

74 55.12(c)(page 182.36) after the word "for," strike the
75 word "erroneous."

76 (c) The legislative rules filed in the state register on
77 the twenty-eighth day of September, one thousand nine
78 hundred eighty-four, modified by the state tax commis-
79 sioner to meet the objections of the legislative rule-
80 making review committee and refiled in the state
81 register on the fourteenth day of November, one
82 thousand nine hundred eighty-four, and on the twenty-
83 first day of March, one thousand nine hundred eighty-
84 five, relating to the state tax commissioner (estimated
85 corporation net income tax), are authorized.

86 (d) The legislative rules filed in the state register on
87 the twelfth day of March, one thousand nine hundred
88 eighty-five, relating to the state tax commissioner
89 (identification and appraisal of farmland subsequent to
90 the base year of statewide reappraisal) are authorized
91 and directed to be promulgated with the following
92 amendments:

93 Title page, Subject; following the word "Farmland,"
94 insert the words "and of Structures Situated Thereon."

95 Page i, Subject; following the word "Farmland,"
96 insert the words "and of Structures Situated Thereon."

97 Page i, TABLE OF CONTENTS, Section 10; follow-
98 ing the words "Valuation of Farmland" add the words
99 "and of Structures Situated Thereon."

100 Page 10.1, Title; following the word "FARMLAND"
101 insert the words "AND STRUCTURES SITUATED
102 THEREON."

103 Page 10.1, Section 10, Title; following the word
104 "Farmland" add the words "and Structures Situated
105 Thereon."

106 Page 10.1, Section 10.01(b); following the word
107 "farmland" insert the words "and structures situated
108 thereon."

109 Page 10.2, Section 10.02(a), first sentence; following
110 the word "farmland" insert the words "and structures
111 situated thereon."

112 Page 10.3, Section 10.02(b), first sentence; following
113 the word "farmland" insert the words "and structures

114 situated thereon." Delete the words "for purposes of the
115 statewide reappraisal."

116 Page 10.3, Section 10.02(b), last sentence; following
117 the word "farmland" insert the words "and structures
118 situated thereon."

119 Page 10.8, Section 10.04(5)(B), last sentence; delete the
120 period and add "or the incapability to be adapted to
121 alternative uses."

122 Page 10.9, Section 10.04(6), first sentence; following
123 the words "land currently being used" insert the words
124 "as part of a farming operation,."

125 Page 10.9, Section 10.04(6), following the last sent-
126 ence; add the sentence "For the purposes of this
127 definition, 'contiguous tracts' are farmlands which are
128 in close proximity, but not necessarily adjacent:
129 *Provided*, That all such contiguous tracts are operated
130 as part of the same farm management plan."

131 Page 10.10, Section 10.04(8), is amended to read in its
132 entirety as follows:

133 "(8) *Farm buildings*.—The term 'farm buildings' shall
134 mean structures which directly contribute to the
135 operation of the farm, and shall include tenant houses
136 and quarters furnished farm employees without rent as
137 a part of the terms of their employment."

138 Page 10.11, Section 10.04; delete the word "No-
139 vember" and insert in lieu thereof the word "Sep-
140 tember." Delete the period following the word "valua-
141 tion" and add the words "for the assessment year
142 beginning July first of each year."

143 Page 10.11, Section 10.04, insert the following
144 subdivision; "(12) Application Form: The application
145 form required to be filed with the assessor on or before
146 September first of each year shall require certification
147 that the farm complies with criteria set forth in Section
148 10.05(c) of these regulations, and renewal applications
149 from year to year shall be sufficient upon statement
150 certifying that no change has been made in the use of
151 farm property which would disqualify 'farm use'

152 classification for assessment purposes." Renumber the
153 subdivisions of Section 10.04 following the new
154 10.04(12); formerly 10.04(12) through 10.04(28), to
155 10.04(13) through 10.04(29) respectively.

156 Page 10.14, Section 10.04(28) (formerly 10.04(27));
157 following the words "woodland products" insert a
158 comma and the words "such as nuts or fruits harvested"
159 and add a comma following the words "human consump-
160 tion" on Page 10.15.

161 Page 10.16, Section 10.05, subsection (a), following the
162 words "land is used for farm purposes" by striking the
163 period and inserting in lieu thereof a colon and the
164 following: "*Provided*, That the true and actual value of
165 all farm used, occupied and cultivated by their owners
166 or bona fide tenants shall be arrived at according to the
167 fair and reasonable value of the property for the purpose
168 for which it is actually used regardless of what the value
169 of the property would be if used for some other purpose;
170 and that the true and actual value shall be arrived at
171 by giving consideration to the fair and reasonable
172 income which the same might be expected to earn under
173 normal conditions in the locality wherein situated, if
174 rented: *Provided, however*, That nothing herein shall
175 alter the method of assessment of lands or minerals
176 owned by domestic or foreign corporations."

177 Page 10.16, Section 10.05(b), first clause; following the
178 words "following factors shall be" insert the words
179 "indicative of but not conclusive" and delete the word
180 "considered."

181 Page 10.16, Section 10.05(b)(2); delete the period and
182 add the words "such as soil conservation, farmland
183 preservation or federal farm lending agencies."

184 Page 10.17, Section 10.05(b)(7); delete the section and
185 insert in lieu thereof the words "(7) Whether or not the
186 farmer practices 'custom farming' on the land in
187 question."

188 Page 10.17, Section 10.05(b)(9); following the word
189 "type" add a comma and insert the word "utility."

190 Page 10.17, Section 10.05(b)(11), first sentence;

191 following the word "sales" insert the words "for nonfarm
192 uses."

193 Page 10.17, Section 10.05(b)(12)(A); following the
194 words "part of" insert the words "or appurtenant to."

195 Page 10.17, Section 10.05(b)(12)(B); following the
196 words "contiguous to" insert the words "or operated in
197 common with."

198 Page 10.18, Section 10.05, subsection (c), the first
199 sentence of which is amended in its entirety to read as
200 follows: "Qualifying farmland and the structures
201 situated thereon shall be subject to farm use valuation,
202 with primary consideration being given to the income
203 which the property might be expected to earn, in the
204 locality wherein situate, if rented."

205 Page 10.18, Section 10.05(b)(12)(B); delete the semicol-
206 ons and the words "it was purchased at the same time
207 as the tract so used." Delete the period following the
208 word "purposes" and add the words "or any nonfarm
209 use."

210 Page 10.19, Section 10.05(c)(2); following the words
211 "Provided, That no" delete the word "reason" and insert
212 in lieu thereof the words "individual event."

213 Page 10.20, Section 10.05(c)(4)(C); following the words
214 "(1,000) minimum production value" insert the words
215 "or the small farm five hundred dollars
216 (\$500) minimum production and sale."

217 Page 10.23, Section 10.05(d)(3)(B), third sentence;
218 following the word "If" insert the words "timber from."
219 Delete the period following the word "purpose" and add
220 the words "or is being converted to farm production
221 uses."

222 Page 10.26, Section 10.05(f)(2) is amended in its
223 entirety to read as follows:

224 "(2) *Farm buildings.*—Rental value of farm buildings
225 and other improvements on the farmland shall be valued
226 by determining the replacement cost of the building or
227 structure by usual farm construction practices, and
228 farm labor standards and subtracting therefrom

229 depreciation.¹ Both of these determinations shall be
230 made in accordance with the tax department's real
231 property appraisal manual² as filed in the state register
232 in accordance with chapter 29A of the code of West
233 Virginia, 1931, as amended, and as it relates to
234 agricultural buildings and structures. One (1) acre of
235 land shall be assigned to all buildings as a unit situate
236 on the property, regardless of the actual acreage
237 occupied by such buildings and shall be appraised at its
238 farm-use valuation based on the highest class of
239 farmland present on the farm."

240 Page 10.28, Section 10.05(f)(3)(B)(1); following the
241 words "or more of the" insert the word "usual."

242 Page 10.28, Section 10.05(f)(3)(B)(2); following the
243 words "(50%) of the" insert the word "usual."

244 Page 10.29, Section 10.05(f)(3)(C)(1)(a); following the
245 words "(50%) or more of the" insert the word "usual."

246 Page 10.29, Section 10.05(f)(3)(C)(1)(b); following the
247 words "(50%) of the" insert the word "usual."

248 Page 10.31, Section 10.05(f)(3)(C)(2)(b); following the
249 last sentence insert the sentence "An individual em-
250 ployed other than in farming is not an unincorporated
251 business."

252 Page 10.35, Section 10.07, Title; following the word
253 "Farmland" insert the words "and Structures Situated
254 Thereon."

255 Page 10.35, Section 10.07(a), first sentence; following
256 the word "farmland" insert the words "and structures
257 situated thereon."

258 Page 10.46, Subject; following the word "Farmland"
259 insert the words "and Structures Situated Thereon."

260 (e) The legislative rules filed in the state register on
261 the twenty-second day of May, one thousand nine
262 hundred eighty-five, relating to the state tax commis-
263 sioner (rules governing the operation of a statewide
264 electronic data processing system network, to facilitate
265 administration of the ad valorem property tax on real
266 and personal property) are authorized.

267 (f) The legislative rules filed in the state register on
268 the twenty-sixth day of March, one thousand nine
269 hundred eighty-six, relating to the state tax commis-
270 sioner (listing of interests in natural resources for the
271 first statewide reappraisal; provision for penalties), are
272 authorized.

273 (g) The legislative rules filed in the state register on
274 the twenty-sixth day of March, one thousand nine
275 hundred eighty-six, modified by the state tax commis-
276 sioner to meet the objections of the legislative rule-
277 making review committee and refiled in the state
278 register on the twelfth day of February, one thousand
279 nine hundred eighty-seven, relating to the state tax
280 commissioner (review of appraisals by county commis-
281 sions sitting as administrative appraisal review boards),
282 are authorized.

283 (h) The legislative rules filed in the state register on
284 the twenty-sixth day of March, one thousand nine
285 hundred eighty-six, modified by the state tax commis-
286 sioner to meet the objections of the legislative rule-
287 making review committee and refiled in the state
288 register on the twelfth day of February, one thousand
289 nine hundred eighty-seven, relating to the state tax
290 commissioner (review of appraisals by a circuit court on
291 certiorari), are authorized with the following
292 amendment:

293 On page 3, §18.3.1 is stricken in its entirety and a new
294 §18.3.1 is inserted in lieu thereof to read as follows:

295 “18.3.1 *Who May Request Review.*—The property
296 owner, Tax Commissioner, protestor or intervenor may
297 request the county commission to certify the evidence
298 and remove and return the record to the circuit court
299 of the county on a writ of certiorari. Parties to the
300 proceeding wherein review by the circuit court is sought
301 shall pay costs and fees as they are incurred: *Provided,*
302 That the circuit court upon rendering judgment or
303 making any order may award costs to any party in
304 accordance with the provisions of W. Va. Code §53-3-5.”

305 (i) The legislative rules filed in the state register on
306 the twenty-sixth day of March, one thousand nine

307 hundred eighty-six, modified by the state tax commis-
308 sioner to meet the objections of the legislative rule-
309 making review committee and refiled in the state
310 register on the twelfth day of February, one thousand
311 nine hundred eighty-seven, relating to the state tax
312 commissioner (administrative review of appraisals by
313 the state tax commissioner), are authorized.

314 (j) The legislative rules filed in the state register on
315 the eighteenth day of August, one thousand nine
316 hundred eighty-six, modified by the state tax commis-
317 sioner to meet the objections of the legislative rule-
318 making review committee and refiled in the state
319 register on the twelfth day of February, one thousand
320 nine hundred eighty-seven, relating to the state tax
321 commissioner (additional review and implementation of
322 property appraisals), are authorized.

323 (k) The legislative rules filed in the state register on
324 the eleventh day of August, one thousand nine hundred
325 eighty-six, relating to the state tax commissioner
326 (guidelines for assessors to assure fair and uniform
327 personal property values), are authorized.

328 (l) The legislative rules filed in the state register on
329 the eighteenth day of August, one thousand nine
330 hundred eighty-six, modified by the state tax commis-
331 sioner to meet the objections of the legislative rule-
332 making review committee and refiled in the state
333 register on the tenth day of December, one thousand
334 nine hundred eighty-six, relating to the state tax
335 commissioner (registration of transient vendors), are
336 authorized.

337 (m) The legislative rules filed in the state register on
338 the fourth day of February, one thousand nine hundred
339 eighty-six, modified by the state tax commissioner to
340 meet the objection of the legislative rule-making review
341 committee and refiled in the state register on the
342 fourteenth day of January, one thousand nine hundred
343 eighty-seven, relating to the state tax commissioner
344 (business and occupation tax), are authorized.

345 (n) The legislative rules filed in the state register on
346 the fourteenth day of August, one thousand nine

347 hundred eighty-seven, modified by the state tax commis-
348 sioner to meet the objections of the legislative rule-
349 making review committee and refiled in the state
350 register on the fourth day of November, one thousand
351 nine hundred eighty-seven, relating to the state tax
352 commissioner (telecommunications tax) are authorized.

353 (o) The legislative rules filed in the state register on
354 the fourteenth day of August, one thousand nine
355 hundred eighty-seven, relating to the state tax commis-
356 sioner (business franchise tax) are authorized.

357 (p) The legislative rules filed in the state register on
358 the seventeenth day of August, one thousand nine
359 hundred eighty-seven, modified by the state tax commis-
360 sioner to meet the objections of the legislative rule-
361 making review committee and refiled in the state
362 register on the twenty-second day of January, one
363 thousand nine hundred eighty-eight, relating to the state
364 tax commissioner (consumers sales and service tax and
365 use tax) are authorized.

366 (q) The legislative rules filed in the state register on
367 the fourteenth day of August, one thousand nine
368 hundred eighty-seven, modified by the state tax commis-
369 sioner to meet the objections of the legislative rule-
370 making review committee and refiled in the state
371 register on the thirteenth day of January, one thousand
372 nine hundred eighty-eight, relating to the state tax
373 commissioner (appraisal of property for periodic
374 statewide reappraisals for ad valorem property tax
375 purposes) are authorized.

376 (r) The legislative rules filed in the state register on
377 the fourteenth day of August, one thousand nine
378 hundred eighty-seven, modified by the state tax commis-
379 sioner to meet the objections of the legislative rule-
380 making review committee and refiled in the state
381 register on the twelfth day of January, one thousand
382 nine hundred eighty-eight, relating to the state tax
383 commissioner (severance tax) are authorized.

384 (s) The legislative rules filed in the state register on
385 the second day of September, one thousand nine
386 hundred eighty-eight, modified by the state tax commis-

387 sioner to meet the objections of the legislative rule-
388 making review committee and refiled in the state
389 register on the twenty-fourth day of February, one
390 thousand nine hundred eighty-nine, relating to the state
391 tax commissioner (solid waste assessment fee) are
392 authorized.

393 (t) The legislative rules filed in the state register on
394 the twelfth day of August, one thousand nine hundred
395 eighty-eight, modified by the state tax commissioner to
396 meet the objections of the legislative rule-making review
397 committee and refiled in the state register on the
398 twenty-first day of September, one thousand nine
399 hundred eighty-eight, relating to the state tax commis-
400 sioner (electronic data processing system network for
401 property tax administration) are authorized.

402 (u) The legislative rules filed in the state register on
403 the nineteenth day of September, one thousand nine
404 hundred eighty-eight, modified by the state tax commis-
405 sioner to meet the objections of the legislative rule-
406 making review committee and refiled in the state
407 register on the twenty-fourth day of February, one
408 thousand nine hundred eighty-nine, relating to the state
409 tax commissioner (exemption of property from ad
410 valorem property taxation) are authorized.

411 (v) The legislative rules filed in the state register on
412 the sixteenth day of September, one thousand nine
413 hundred eighty-eight, modified by the state tax commis-
414 sioner to meet the objections of the legislative rule-
415 making review committee and refiled in the state
416 register on the thirteenth day of January, one thousand
417 nine hundred eighty-nine, relating to the state tax
418 commissioner (consumers sales and service tax and use
419 tax) are authorized.

§64-2-3. State board of investments.

1 (a) The legislative rules filed in the state register on
2 the third day of January, one thousand nine hundred
3 eighty-four, relating to the state board of investments
4 (selection of state depositories for disbursement accounts
5 through competitive bidding) are authorized.

6 (b) The legislative rules filed in the state register on
7 the third day of January, one thousand nine hundred
8 eighty-four, relating to the state board of investments
9 (administration of the consolidated fund) are autho-
10 rized.

§64-2-4. West Virginia health care cost review authority.

1 (a) The legislative rules filed in the state register on
2 the twenty-first day of October, one thousand nine
3 hundred eighty-three, relating to the health care cost
4 review authority (limitation on hospital gross patient
5 revenue) are authorized.

6 (b) The legislative rules filed in the state register on
7 the nineteenth day of December, one thousand nine
8 hundred eighty-three, relating to the health care cost
9 review authority (freeze on hospital rates and granting
10 temporary rate increases) are authorized.

11 (c) The legislative rules filed in the state register on
12 the twenty-first day of December, one thousand nine
13 hundred eighty-four, relating to the health care cost
14 review authority (implementation of the utilization
15 review and quality assurance program) are authorized.

16 (d) The legislative rules filed in the state register on
17 the fifteenth day of August, one thousand nine hundred
18 eighty-four, relating to the health care cost review
19 authority (hospital cost containment methodology), are
20 authorized.

21 (e) The legislative rules filed in the state register on
22 the twenty-fifth day of November, one thousand nine
23 hundred eighty-five, modified by the West Virginia
24 health care cost review authority to meet the objections
25 of the legislative rule-making review committee and
26 refiled in the state register on the twenty-eighth day of
27 January, one thousand nine hundred eighty-six, relating
28 to the West Virginia health care cost review authority
29 (interim standards for lithotripsy services) are
30 authorized.

31 (f) The legislative rules filed in the state register on
32 the third day of September, one thousand nine hundred
33 eighty-seven, modified by the West Virginia health care

34 cost review authority to meet the objections of the
35 legislative rule-making review committee and refiled in
36 the state register on the twenty-seventh day of January,
37 one thousand nine hundred eighty-eight, relating to the
38 West Virginia health care cost review authority (exemp-
39 tions from certificate of need review) are authorized.

40 (g) The legislative rules filed in the state register on
41 the nineteenth day of September, one thousand nine
42 hundred eighty-eight, modified by the health care cost
43 review authority to meet the objections of the legislative
44 rule-making review committee and refiled in the state
45 register on the twenty-first day of February, one
46 thousand nine hundred eighty-nine, relating to the
47 health care cost review authority (financial disclo-
48 sure) are authorized.

§64-2-5. Commissioner of highways.

1 (a) The legislative rules filed in the state register on
2 the twenty-first day of October, one thousand nine
3 hundred eighty-three, relating to the commissioner of
4 highways (transportation of hazardous waste by high-
5 way transporters) are authorized with the amendments
6 set forth below:

7 Pages 3 and 7 after "40 CFR part 262" add the words
8 "as amended through March 8, 1986,"

9 Page 7 after "49 CFR parts 171-179" add the words
10 "as amended through March 8, 1986," and

11 Page 11 after "49 CFR part 171.16" add the words "as
12 amended through March 8, 1986."

13 (b) The legislative rules filed in the state register on
14 the tenth day of August, one thousand nine hundred
15 eighty-four, relating to the commissioner of highways
16 (construction and reconstruction of state roads), are
17 authorized with the amendments set forth below:

18 Page 16, Sec. 8.08, line 21 (unnumbered), by inserting
19 after the word "all" the following language: "reasonable
20 and necessary" and after the word "project" inserting
21 the following language: "by the Railroad".

22 Page 16, Sec. 8.08, line 22, (unnumbered), after the
23 word "the" by striking the words "Railroad's Chief".

24 Page 19, Sec. 8.08, line 25, (unnumbered), by striking
25 "Railroad's Chief" and adding the following new
26 language:

27 Any approval by the Department of any activity by
28 the Contractor upon the right-of-way or premises of any
29 Railroad which is provided for in this Section (8.08)
30 (including, but not limited to, approval of work,
31 methods, or procedures of work to be done, and the
32 condition of premises after completion of work by the
33 Contractor) shall in no way create any liability by the
34 Department to the Railroad except to the extent
35 provided otherwise by law and the Contractor shall,
36 during all periods of construction and thereafter,
37 indemnify and save harmless the department from any
38 and all liability to the Railroad or any third parties for
39 any damages as a result of the work of the Contractor,
40 the methods and procedures for performing work, the
41 failure of the Contractor to properly remove equipment,
42 surplus material and other debris upon the Railroad
43 premises, or the condition of the premises of the
44 Railroad during construction or after completion of
45 construction by the Contractor as approved by the
46 Department or otherwise.

47 Page 18, Sec. 8.08, subdivision (a), line 22, (unnum-
48 bered), by striking the words "single limit" and
49 inserting in lieu thereof the following language: "per
50 occurrence".

51 Page 19, Sec. 8.08, subdivision (b), line 8, (unnum-
52 bered), by striking the words "single limit" and
53 inserting in lieu thereof the following language: "per
54 occurrence".

55 Page 19, Sec. 8.08 (c), line 18, (unnumbered), by
56 inserting after the word "occurrence" the following
57 language: "of"; and after the word "injury" insert a
58 comma and strike the word "or".

59 (c) The legislative rules filed in the state register on
60 the seventh day of September, one thousand nine
61 hundred eighty-four, modified by the commissioner of

62 highways to meet the objections of the legislative rule-
63 making review committee and refiled in the state
64 register on the fifth day of October, one thousand nine
65 hundred eighty-four, relating to the commissioner of
66 highways (transportation of hazardous waste) are
67 authorized with the amendment set forth below:

68 Page 5, by amending §3.01 by adding thereto a new
69 subsection, designated subsection (4), to read as follows:
70 “(4) Before accepting hazardous waste from a rail
71 transporter, a highway transporter must sign and date
72 the manifest and provide a copy to the rail transporter.”

73 (d) The legislative rules filed in the state register on
74 the fourteenth day of August, one thousand nine
75 hundred eighty-four, modified by the commissioner of
76 highways to meet the objections of the legislative rule-
77 making review committee and refiled in the state
78 register on the fifth day of October, one thousand nine
79 hundred eighty-four, relating to the commissioner of
80 highways (disqualification and suspension of
81 prequalified contractors) are authorized.

82 (e) The legislative rules filed in the state register on
83 the twelfth day of December, one thousand nine hundred
84 eighty-five, relating to the commissioner of highways
85 (transportation of hazardous wastes by vehicle upon the
86 roads and highways of this state) are authorized with
87 the amendments set forth below:

88 On page 18, the first line of §3.03 shall read as follows:

89 “3.03. Transporters who only accept Hazardous Waste
90 from”.

91 (f) The legislative rules filed in the state register on
92 the first day of December, one thousand nine hundred
93 eighty-seven, modified by the commissioner of highways
94 to meet the objections of the legislative rule-making
95 review committee and refiled in the state register on the
96 fourteenth day of January, one thousand nine hundred
97 eighty-eight, relating to the commissioner of highways
98 (traffic and safety rules and regulations) are authorized
99 with the amendment set forth below:

100 On page 8, section 7.2, line 9, (unnumbered), by
101 striking everything after the word "structures".

102 (g) The legislative rules filed in the state register on
103 the first day of December, one thousand nine hundred
104 eighty-seven, relating to the commissioner of highways
105 (construction and reconstruction of state roads) are
106 authorized.

107 (h) The legislative rules filed in the state register on
108 the twenty-fifth day of February, one thousand nine
109 hundred eighty-seven, modified by the commissioner of
110 highways to meet the objections of the legislative rule-
111 making review committee and refiled in the state
112 register on the twenty-third day of November, one
113 thousand nine hundred eighty-seven, relating to the
114 commissioner of highways (transportation of hazardous
115 wastes upon the roads and highways) are authorized.

§64-2-6. Commissioner of motor vehicles.

1 (a) The legislative rules filed in the state register on
2 the second day of December, one thousand nine hundred
3 eighty-two, relating to the commissioner of motor
4 vehicles (denial of driving privileges), are authorized
5 with the amendments set forth below:

6 By inserting the words "licensed in the United States"
7 after the phrase "physician of the applicant's choice," on
8 page five, line two, and page seven, line one; and by
9 striking out the words "licensed vision specialist" and
10 inserting in lieu thereof the words "an optometrist or
11 ophthalmologist licensed in the United States," on page
12 five, line three, and on page seven, line two.

13 (b) The legislative rules filed in the state register on
14 the ninth day of November, one thousand nine hundred
15 eighty-three, relating to the commissioner of motor
16 vehicles (driving under the influence, drivers' license
17 revocation administrative hearings) are authorized.

18 (c) The legislative rules filed in the state register on
19 the fifteenth day of December, one thousand nine
20 hundred eighty-three, relating to the department of
21 motor vehicles (safety and treatment program) are
22 authorized.

23 (d) The legislative rules filed in the state register on
24 the sixteenth day of June, one thousand nine hundred
25 eighty-three, relating to the commissioner of motor
26 vehicles (compulsory insurance) are authorized.

27 (e) The legislative rules filed in the state register on
28 the twentieth day of November, one thousand nine
29 hundred eighty-four, relating to the commissioner of
30 motor vehicles (titling a vehicle), are authorized.

31 (f) The legislative rules filed in the state register on
32 the tenth day of September, one thousand nine hundred
33 eighty-four, modified by the commissioner of motor
34 vehicles to meet the objections of the legislative rule-
35 making review committee and refiled in the state
36 register on the fifth day of October, one thousand nine
37 hundred eighty-four, relating to the commissioner of
38 motor vehicles (compulsory motor vehicle liability
39 insurance) are authorized.

40 (g) The legislative rules filed in the state register on
41 the fifth day of August, one thousand nine hundred
42 eighty-five, modified by the commissioner of motor
43 vehicles to meet the objections of the legislative rule-
44 making review committee and refiled in the state
45 register on the fourth day of October, one thousand nine
46 hundred eighty-five, relating to the commissioner of
47 motor vehicles (eligibility for reinstatement following
48 suspension or revocation of driving privileges), are
49 authorized.

50 (h) The legislative rules filed in the state register on
51 the fifth day of August, one thousand nine hundred
52 eighty-five, relating to the commissioner of motor
53 vehicles (the administration and enforcement of motor
54 vehicle inspections) are authorized.

55 (i) The legislative rules filed in the state register on
56 the twenty-fifth day of July, one thousand nine hundred
57 eighty-six, modified by the commissioner of motor
58 vehicles to meet the objections of the legislative rule-
59 making review committee and refiled in the state
60 register on the ninth day of October, one thousand nine
61 hundred eighty-six, relating to the commissioner of

62 motor vehicles (seizure of a driver's license and issuance
63 of a temporary driver's license), are authorized.

64 (j) The legislative rules filed in the state register on
65 the twenty-fifth day of July, one thousand nine hundred
66 eighty-six, modified by the commissioner of motor
67 vehicles to meet the objections of the legislative rule-
68 making review committee and refiled in the state
69 register on the ninth day of October, one thousand nine
70 hundred eighty-six, relating to the commissioner of
71 motor vehicles (federal safety standards inspection
72 program), are authorized.

73 (k) The legislative rules filed in the state register on
74 the seventeenth day of August, one thousand nine
75 hundred eighty-seven, modified by the commissioner of
76 motor vehicles to meet the objections of the legislative
77 rule-making review committee and refiled in the state
78 register on the twenty-second day of September, one
79 thousand nine hundred eighty-seven, relating to the
80 commissioner of motor vehicles (denial, suspension,
81 revocation or renewal of driving privileges) are autho-
82 rized with the amendment set forth below:

83 On page 7, section 7.2 after the words "75 m.p.h.," add
84 the words "except on highways where the established
85 speed limit is 65 m.p.h., and conviction was in excess
86 of 80 m.p.h.",

87 And,

88 On page 14, section 8.1 by inserting the words "not
89 to exceed fifteen hours" after the word "course" and in
90 section 8.2 by inserting the words "not to exceed fifteen
91 hours" after the word "course".

92 (l) The legislative rules filed in the state register on
93 the twenty-second day of November, one thousand nine
94 hundred eighty-eight, modified by the commissioner of
95 motor vehicles to meet the objections of the legislative
96 rule-making review committee and refiled in the state
97 register on the twentieth day of January, one thousand
98 nine hundred eighty-nine, relating to the commissioner
99 of motor vehicles (denial, suspension, revocation or
100 nonrenewal of driving privileges) are authorized.

§64-2-7. Department of natural resources.

1 (a) The legislative rules filed in the state register on
2 the eighth day of December, one thousand nine hundred
3 eighty-three, relating to the department of natural
4 resources (surface mining) are authorized with the
5 amendments set forth below:

6 Page 3-4, §3E.01 by adding after the word "engineer"
7 the words "or licensed land surveyor."

8 Page 3-5, §3E.02, subsection (a), by adding after the
9 word "mining" the words "or civil."

10 Page 3-5, §3E.02, subsection (b), by adding after the
11 first sentence—"Those persons who have been approved
12 to date need not make said demonstration."

13 (b) The legislative rules filed in the state register on
14 the twentieth day of January, one thousand nine
15 hundred eighty-four, relating to the department of
16 natural resources (solid waste management) are autho-
17 rized with the amendments set forth below:

18 Page 9, section 4.04, line five, add the following
19 paragraph:

20 "Upon request of any applicant, the division shall
21 meet with the applicant for prefiling review of the
22 application. The division, with the cooperation of the
23 solid waste authority, shall assist the applicant in
24 preparing a complete and proper application which
25 would not be rejected as incomplete."

26 On page 15, section 6.03 (c) (1) in the first full
27 sentence, after the word "cease", strike the remainder
28 of the sentence and insert in lieu thereof the words
29 "within fifteen (15) days of receipt of an order of
30 suspension" and in the second sentence strike the word
31 "recommence" and insert the words "continue beyond
32 fifteen (15) days"; (c)(2) in the first full sentence, after
33 the word "cease" by striking out the remainder of the
34 sentence and insert in lieu thereof the words "imme-
35 diately upon receipt of an order of revocation."

36 (c) The legislative rules filed in the state register on
37 the twenty-sixth day of September, one thousand nine
38 hundred eighty-four, relating to the department of

39 natural resources (public use of state parks, forests,
40 hunting and fishing areas), are authorized.

41 (d) The legislative rules filed in the state register on
42 the seventh day of November, one thousand nine
43 hundred eighty-four, relating to the department of
44 natural resources (surface mining reclamation) are
45 authorized.

46 (e) The legislative rules filed in the state register on
47 the seventh day of November, one thousand nine
48 hundred eighty-four, relating to the department of
49 natural resources (coal refuse disposal) are authorized.

50 (f) The legislative rules filed in the state register on
51 the ninth day of November, one thousand nine hundred
52 eighty-four, relating to the department of natural
53 resources (transfer of the state national pollutant
54 discharge elimination system program), are authorized
55 with the amendments set forth below:

56 Page 10-5, by striking § 10B.19 and inserting in lieu
57 thereof a new § 10B.19, to read as follows: "Effluent
58 limitations guidelines' means a regulation published by
59 the Administrator under Section 304(b) or Section
60 301(b)(1)(B) of the CWA to adopt or revise effluent
61 limitations or levels of effluent quality attainable
62 through the application of secondary or equivalent
63 treatment. For the coal industry these regulations are
64 published at 40 C.F.R. Parts 434 and 133. (See:
65 Appendix G and H)"

66 (g) The legislative rules filed in the state register on
67 the twenty-eighth day of August, one thousand nine
68 hundred eighty-four, relating to the department of
69 natural resources (small arms hunting) are authorized.

70 (h) The legislative rules filed in the state register on
71 the sixth day of January, one thousand nine hundred
72 eighty-four, relating to the department of natural
73 resources (hazardous waste management), are
74 authorized.

75 (i) The legislative rules filed in the state register on
76 the third day of December, one thousand nine hundred
77 eighty-four, modified by the department of natural

78 resources to meet the objections of the legislative rule-
79 making review committee and refiled in the state
80 register on the thirteenth day of February, one thousand
81 nine hundred eighty-five, relating to the department of
82 natural resources (hazardous waste management), are
83 authorized.

84 (j) The legislative rules filed in the state register on
85 the tenth day of October, one thousand nine hundred
86 eighty-five, relating to the department of natural
87 resources (hazardous waste management: small quantity
88 generators and waste minimization certification), are
89 authorized with the amendments set forth below:

90 On page 1, §3.1.4b, delete the word "or" in the
91 reference to "paragraph (g) or (j)" and insert in lieu
92 thereof the words "and, if applicable."

93 (k) The legislative rules filed in the state register on
94 the ninth day of September, one thousand nine hundred
95 eighty-five, relating to the department of natural
96 resources (WV/NPDES regulations for the coal mining
97 point source category and related sewage facilities), are
98 authorized.

99 (l) The legislative rules filed in the state register on
100 the eleventh day of December, one thousand nine
101 hundred eighty-five, modified by the department of
102 natural resources to meet the objections of the legislative
103 rule-making review committee and refiled in the state
104 register on the twentieth day of February, one thousand
105 nine hundred eighty-six, relating to the department of
106 natural resources (hazardous waste management), are
107 authorized.

108 (m) The legislative rules filed in the state register on
109 the twenty-sixth day of September, one thousand nine
110 hundred eighty-six, modified by the department of
111 natural resources to meet the objections of the legislative
112 rule-making review committee and refiled in the state
113 register on the ninth day of December, one thousand
114 nine hundred eighty-six, relating to the department of
115 natural resources (hazardous waste management regu-
116 lations), are authorized.

117 (n) The legislative rules filed in the state register on
118 the seventh day of August, one thousand nine hundred
119 eighty-six, relating to the director of the department of
120 natural resources (procedures for transporting and
121 dealing in furbearing animals), are authorized.

122 (o) The legislative rules filed in the state register on
123 the thirtieth day of December, one thousand nine
124 hundred eighty-six, relating to the department of
125 natural resources (WV/NPDES program for coal mines
126 and preparation plants, and the refuse and waste
127 therefrom), are authorized with the amendments set
128 forth below:

129 On page four, § 1.9.1.a by inserting the words "five
130 thousand dollars or" after the words "'significant
131 portion of income' means" and

132 On page four, § 1.9.1.a by inserting the words
133 "whichever is less," after the words "ten percent or more
134 of gross personal income for a calendar year".

135 (p) The legislative rules filed in the state register on
136 the fifth day of March, one thousand nine hundred
137 eighty-six, relating to the department of natural
138 resources (hazardous waste management), are
139 authorized.

140 (q) The legislative rules filed in the state register on
141 the twelfth day of August, one thousand nine hundred
142 eighty-seven, relating to the department of natural
143 resources (WV/NPDES regulations for coal mining
144 facilities) are authorized.

145 (r) The legislative rules filed in the state register on
146 the tenth day of June, one thousand nine hundred
147 eighty-seven, relating to the director of the department
148 of natural resources (outfitters and guides) are
149 authorized.

150 (s) The legislative rules filed in the state register on
151 the ninth day of January, one thousand nine hundred
152 eighty-seven, relating to the department of natural
153 resources (hazardous waste management regulations),
154 are authorized.

155 (t) The legislative rules filed in the state register on
156 the fifth day of March, one thousand nine hundred
157 eighty-seven, relating to the department of natural
158 resources (hazardous waste management regulations,
159 series 35), are authorized.

160 (u) The legislative rules filed in the state register on
161 the seventh day of December, one thousand nine
162 hundred eighty-seven, relating to the department of
163 natural resources (hazardous waste management regu-
164 lations, series 35) are authorized.

165 (v) The legislative rules filed in the state register on
166 the sixteenth day of December, one thousand nine
167 hundred eighty-seven, modified by the department of
168 natural resources to meet the objections of the legislative
169 rule-making review committee and refiled in the state
170 register on the fourteenth day of January, one thousand
171 nine hundred eighty-eight, relating to the department of
172 natural resources (solid waste management) are
173 authorized.

174 (w) The legislative rules filed in the state register on
175 the twenty-eighth day of July, one thousand nine
176 hundred eighty-seven, modified by the director of the
177 department of natural resources to meet the objections
178 of the legislative rule-making review committee and
179 refiled in the state register on the seventh day of
180 August, one thousand nine hundred eighty-seven,
181 relating to the director of the department of natural
182 resources (boating regulations) are authorized with the
183 amendment set forth below:

184 On page 16, section 6.2, line 3 by inserting following
185 the period "This regulation does not apply to licensed
186 outfitters and guides." These rules were proposed by the
187 director of the department of natural resources pursu-
188 ant to section seven, article one and section twenty-two,
189 article seven, chapter twenty of this code.

190 (x) The legislative rules filed in the state register on
191 the second day of September, one thousand nine
192 hundred eighty-eight, modified by the department of
193 natural resources to meet the objections of the legislative
194 rule-making review committee and refiled in the state

195 register on the seventeenth day of October, one thousand
196 nine hundred eighty-eight, relating to the department of
197 natural resources (hazardous waste management) are
198 authorized.

199 (y) The legislative rules filed in the state register on
200 the thirty-first day of August, one thousand nine
201 hundred eighty-eight, relating to the director of the
202 department of natural resources (boating) are
203 authorized.

204 (z) The legislative rules filed in the state register on
205 the eighth day of March, one thousand nine hundred
206 eighty-eight, modified by director of the department of
207 natural resources to meet the objections of the legislative
208 rule-making review committee and refiled in the state
209 register on the thirtieth day of August, one thousand
210 nine hundred eighty-eight, relating to the director of the
211 department of natural resources (commercial sale of
212 wildlife) are authorized.

213 (aa) The legislative rules filed in the state register on
214 the twenty-seventh day of January, one thousand nine
215 hundred eighty-eight, relating to the director of the
216 department of natural resources (catching and selling
217 bait fish) are authorized.

218 (bb) The legislative rules filed in the state register on
219 the twenty-fifth day of March one thousand nine
220 hundred eighty-eight, relating to the director of the
221 department of natural resources (West Virginia public
222 hunting and fishing areas) are authorized with the
223 following amendment:

224 On page three, section 3.8.4, by inserting after the
225 word "vehicle" the following ", all terrain vehicle
226 (ATV)".

§64-2-8. Department of energy.

1 (a) The legislative rules filed in the state register on
2 the thirty-first day of March, one thousand nine hundred
3 eighty-two, relating to the department of mines
4 (energy) (mine safety program), are authorized.

5 (b) The legislative rules filed in the state register on

6 the seventeenth day of August, one thousand nine
7 hundred eighty-three, relating to the department of
8 energy (governing the safety of those employed in and
9 around surface mines), are authorized.

10 (c) The legislative rules filed in the state register on
11 the seventh day of December, one thousand nine
12 hundred eighty-three, relating to the office of oil and
13 gas, department of mines (energy), (oil and gas and
14 other wells) are authorized with the amendment set
15 forth below:

16 Page viii, place an * in front of section 32.02.

17 Page ix, after section 35.04 add the following:

18 “*35.05 Extra Powers of the Administrator 64.”

19 Page 1, section 1.03 in the list of additional regula-
20 tions, add 35.05; in the list of revised regulations, add
21 32.02, 32.03 and 33.00.

22 Page 52 section 32.04 and section 32.05 add at the end
23 of (ii) the words “and (iii) definition of proration unit”.

24 Page 53 section 33 After the word “definitions” add
25 the following sentence: “The following definitions are
26 applicable to these regulations used for purposes of
27 implementing the Natural Gas Policy Act of 1978 and
28 are not intended to be used in any other context.”

29 Page 55, section 33.02 (b)(16) after the word “forma-
30 tions” in the third lines of (i) and (ii), add the words “for
31 which a well has been.”

32 Page 64, after section 35.04 add the following section:
33 35.05 Extra powers of the Administrator.

34 “The administrator may also certify or provide a
35 waiver for a well located within a proration unit as
36 defined in 32.02 (b)(16) or any other well sought to be
37 certified under these regulations after notice and
38 hearing.”

39 (d) The legislative rules filed in the state register on
40 the eleventh day of August, one thousand nine hundred
41 eighty-six, modified by the director of the division of oil
42 and gas of the department of energy to meet the

43 objections of the legislative rule-making review commit-
44 tee and refiled in the state register on the fifteenth day
45 of December, one thousand nine hundred eighty-six,
46 relating to the director of the division of oil and gas of
47 the department of energy (oil and gas wells and other
48 wells), are authorized.

49 (e) The legislative rules filed in the state register on
50 the eleventh day of August, one thousand nine hundred
51 eighty-six, modified by the director of the oil and gas
52 division of the department of energy to meet the
53 objections of the legislative rule-making review commit-
54 tee and refiled in the state register on the fifteenth day
55 of December, one thousand nine hundred eighty-six,
56 relating to the director of the division of oil and gas of
57 the department of energy (certification of gas wells), are
58 authorized.

59 (f) The legislative rules filed in the state register on
60 the eleventh day of August, one thousand nine hundred
61 eighty-six, modified by the director of the division of oil
62 and gas of the department of energy to meet the
63 objections of the legislative rule-making review commit-
64 tee and refiled in the state register on the fifteenth day
65 of December, one thousand nine hundred eighty-six,
66 relating to the director of the division of oil and gas of
67 the department of energy (underground injection
68 control), are authorized.

69 (g) The legislative rules filed in the state register on
70 the eleventh day of August, one thousand nine hundred
71 eighty-six, modified by the director of the division of oil
72 and gas of the department of energy to meet the
73 objections of the legislative rule-making review commit-
74 tee and refiled in the state register on the fifteenth day
75 of December, one thousand nine hundred eighty-six,
76 relating to the director of the division of oil and gas of
77 the department of energy (state national pollutant
78 discharge elimination system (NPDES) program), are
79 authorized.

80 (h) The legislative rules filed in the state register on
81 the fourteenth day of November, one thousand nine
82 hundred eighty-six, modified by the commissioner of the

83 department of energy to meet the objections of the
84 legislative rule-making review committee and refiled in
85 the state register on the sixteenth day of December, one
86 thousand nine hundred eighty-six, relating to the
87 commissioner of the department of energy (standards
88 for certification of coal mine electricians), are authorized with the following amendments:

90 "Page one, §2.1, subsection (a), following the second
91 word, 'electrician' by striking the colon and inserting the
92 following: 'under the supervision required by section
93 4.1(d) of these rules' and a colon.

94 Page one, §2.1, subsection (a), by deleting all of
95 subdivision (6) and renumbering the subsequent
96 subdivisions.

97 Page two, §2.1, subsection (a), by deleting all of
98 subdivision (9).

99 Page two, §2.1, subsection (b), by deleting all of
100 subdivision (14) and inserting in lieu thereof a new
101 subdivision (14) to read as follows: '(14) Replace blown
102 fuses on trolley poles and nips.'

103 Page five, §4.1, subsection (d), line three, following the
104 words 'certified electrician prior' by inserting the words
105 'to any work being performed and again prior'."

106 (i) The legislative rules filed in the state register on
107 the fifteenth day of December, one thousand nine
108 hundred eighty-six, modified by the commissioner of the
109 department of energy to meet the objections of the
110 legislative rule-making review committee and refiled in
111 the state register on the twenty-first day of January, one
112 thousand nine hundred eighty-seven, relating to the
113 commissioner of the department of energy (safety
114 training program for prospective underground coal
115 miners in West Virginia), are authorized.

116 (j) The legislative rules filed in the state register on
117 the eleventh day of August, one thousand nine hundred
118 eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand

122 nine hundred eighty-six, relating to the commissioner of
123 the department of energy (miscellaneous water pollution
124 control), are authorized.

125 (k) The legislative rules filed in the state register on
126 the eleventh day of August, one thousand nine hundred
127 eighty-six, modified by the commissioner of the depart-
128 ment of energy to meet the objections of the legislative
129 rule-making review committee and refiled in the state
130 register on the fifteenth day of December, one thousand
131 nine hundred eighty-six, relating to the commissioner of
132 the department of energy (dam control), are authorized.

133 (l) The legislative rules filed in the state register on
134 the eleventh day of August, one thousand nine hundred
135 eighty-six, modified by the commissioner of the depart-
136 ment of energy to meet the objections of the legislative
137 rule-making review committee and refiled in the state
138 register on the fifteenth day of December, one thousand
139 nine hundred eighty-six, relating to the commissioner of
140 the department of energy (solid waste management), are
141 authorized.

142 (m) The legislative rules filed in the state register on
143 the eleventh day of August, one thousand nine hundred
144 eighty-six, modified by the commissioner of the depart-
145 ment of energy to meet the objections of the legislative
146 rule-making review committee and refiled in the state
147 register on the fifteenth day of December, one thousand
148 nine hundred eighty-six, relating to the commissioner of
149 the department of energy (hazardous waste manage-
150 ment), are authorized.

151 (n) The legislative rules filed in the state register on
152 the twentieth day of April, one thousand nine hundred
153 eighty-seven, relating to the commissioner of the
154 department of energy (roof control) are authorized.

155 (o) The legislative rules filed in the state register on
156 the third day of April, one thousand nine hundred
157 eighty-seven, relating to the department of energy
158 (standards for certification of underground belt examin-
159 ers for underground coal mines), are authorized.

160 (p) The legislative rules filed in the state register on

161 the ninth day of April, one thousand nine hundred
162 eighty-seven, relating to the commissioner of the
163 department of energy (performance standards for
164 blasting on surface mines) are authorized.

165 (q) The legislative rules filed in the state register on
166 the twelfth day of January, one thousand nine hundred
167 eighty-seven, modified by the commissioner of the
168 department of energy to meet the objections of the
169 legislative rule-making review committee and refiled in
170 the state register on the twentieth day of February, one
171 thousand nine hundred eighty-seven, relating to the
172 commissioner of the department of energy (state
173 national pollutant discharge elimination system
174 (NPDES) for mines and minerals), are authorized.

175 (r) The Legislature hereby authorizes and directs the
176 department of energy to promulgate the procedural
177 rules filed in the state register on the twenty-first day
178 of October, one thousand nine hundred eighty-seven,
179 relating to the department of energy (requests for
180 information) with the amendments set forth below:

181 On page two, subsection 3.1, by striking subdivision
182 (d) and renumbering the remaining subdivisions, and

183 On page three, section 6, by striking all of subsection
184 6.1 and inserting in lieu thereof, the following:

185 "6.1 The department shall establish fixed rate fees for
186 reproduction of documents, records, and files on the
187 basis of the actual cost of such reproduction and shall
188 document such costs: *Provided*, That where total costs
189 are less than five dollars, no fee shall be charged."

190 (s) The legislative rules filed in the state register on
191 the twelfth day of May, one thousand nine hundred
192 eighty-seven, modified by the commissioner of the
193 department of energy to meet the objections of the
194 legislative rule-making review committee and refiled in
195 the state register on the fourteenth day of August, one
196 thousand nine hundred eighty-seven, relating to the
197 commissioner of the department of energy (blasters
198 certification for surface coal mines and surface areas of
199 coal mines) are authorized.

200 (t) The legislative rules filed in the state register on
201 the twentieth day of January, one thousand nine
202 hundred eighty-eight, modified by the commissioner of
203 the department of energy to meet the objections of the
204 legislative rule-making review committee and refiled in
205 the state register on the twenty-eighth day of November,
206 one thousand nine hundred eighty-eight, relating to the
207 commissioner of the department of energy (abandoned
208 mine reclamation) are authorized.

§64-2-9. Department of labor.

1 (a) The legislative rules filed in the state register on
2 the tenth day of May, one thousand nine hundred eighty-
3 two, relating to the commissioner of labor (steam boiler
4 rules) as modified by the legislative rule-making review
5 committee are authorized.

6 (b) The legislative rules filed in the state register on
7 the seventh day of December, one thousand nine
8 hundred eighty-three, relating to the department of
9 labor (hazardous chemical substances) are authorized.

10 (c) The legislative rules filed in the state register on
11 the second day of February, one thousand nine hundred
12 eighty-four, relating to the department of labor (poly-
13 graph examinations) are authorized

14 (d) The legislative rules filed in the state register on
15 the twenty-second day of December, one thousand nine
16 hundred eighty-seven, relating to the commissioner of
17 labor (West Virginia occupational safety and health act)
18 are authorized.

19 (e) The legislative rules filed in the state register on
20 the twenty-second day of December, one thousand nine
21 hundred eighty-seven, modified by the commissioner of
22 labor to meet the objections of the legislative rule-
23 making review committee and refiled in the state
24 register on the twentieth day of January, one thousand
25 nine hundred eighty-eight, relating to the commissioner
26 of labor (wage payment and collection act) are
27 authorized.

28 (f) The legislative rules filed in the state register on
29 the sixteenth day of November, one thousand nine

30 hundred eighty-seven, relating to the commissioner of
31 the department of labor (standards for weights and
32 measures inspectors—adoption of NBS Handbook 130,
33 1987) are authorized.

34 (g) The legislative rules filed in the state register on
35 the twelfth day of January, one thousand nine hundred
36 eighty-eight, relating to the commissioner of labor
37 (steam boiler inspection fee schedule) are authorized.

38 (h) The legislative rules filed in the state register on
39 the thirteenth day of September, one thousand nine
40 hundred eighty-eight, modified by the department of
41 labor to meet the objections of the legislative rule-
42 making review committee and refiled in the state
43 register on the seventh day of December, one thousand
44 nine hundred eighty-eight, relating to the department of
45 labor (amusement rides and amusement attractions
46 safety act) are authorized.

§64-2-10. Insurance commissioner.

1 (a) The legislative rules filed in the state register on
2 the eighteenth day of October, one thousand nine
3 hundred eighty-three, relating to the insurance commis-
4 sioner (excess line brokers), are authorized.

5 (b) The legislative rules filed in the state register on
6 the eighteenth day of August, one thousand nine
7 hundred eighty-six, modified by the insurance commis-
8 sioner to meet the objection of the legislative rule-
9 making review committee and refiled in the state
10 register on the twelfth day of December, one thousand
11 nine hundred eighty-six, relating to the insurance
12 commissioner (examiners' compensation, qualification
13 and classification), are authorized.

14 (c) The legislative rules filed in the state register on
15 the twentieth day of February, one thousand nine
16 hundred eighty-seven, relating to the insurance commis-
17 sioner (West Virginia essential property insurance
18 association) are authorized.

19 (d) The legislative rules filed in the state register on
20 the twenty-ninth day of May, one thousand nine hundred
21 eighty-seven, relating to the insurance commissioner

22 (medical malpractice annual reporting requirements)
23 are authorized.

24 (e) The legislative rules filed in the state register on
25 the thirty-first day of July, one thousand nine hundred
26 eighty-seven, modified by the insurance commissioner to
27 meet the objections of the legislative rule-making review
28 committee and refiled in the state register on the
29 seventh day of November, one thousand nine-hundred
30 eighty-seven, relating to the insurance commissioner
31 (medical malpractice loss experience and loss expense
32 reporting requirements) are authorized.

33 (f) The legislative rules filed in the state register on
34 the thirtieth day of November, one thousand nine
35 hundred eighty-eight, modified by the insurance com-
36 missioner to meet the objections of the legislative rule-
37 making review committee and refiled in the state
38 register on the twenty-first day of February, one
39 thousand nine hundred eighty-nine, relating to the
40 insurance commissioner (transitional requirements for
41 the conversion of medicare supplement insurance
42 benefits and premiums to conform to medicare program
43 revisions) are authorized.

§64-2-11. Attorney general.

1 (a) The legislative rules filed in the state register on
2 the sixth day of December, one thousand nine hundred
3 eighty-four, relating to the attorney general (third party
4 dispute mechanisms) are authorized.

5 (b) The legislative rules filed in the state register on
6 the ninth day of January, one thousand nine hundred
7 eighty-five, relating to the attorney general (fair
8 treatment of crime victims and witnesses) are
9 authorized.

10 (c) The legislative rules filed in the state register on
11 the nineteenth day of September, one thousand nine
12 hundred eighty-six, modified by the attorney general to
13 meet the objections of the legislative rule-making review
14 committee and refiled in the state register on the first
15 day of December, one thousand nine hundred eighty-six,
16 relating to the attorney general (prevention of unfair or

17 deceptive acts or practices in home improvement and
18 home construction transactions), are authorized. These
19 rules were proposed by the attorney general pursuant
20 to section one hundred three, article six and section one
21 hundred two, article seven of chapter forty-six-a of this
22 code with the following amendments:

23 "Amending the title to the proposed legislative rule
24 wherever said title may appear, on lines three and four
25 thereof, by striking the words 'and home construction'.

26 On the index page following '3.' by striking the words
27 'and home construction'.

28 On page 1, §1.2, line three, after the first word
29 'transactions' on line three, by striking the comma and
30 the words 'and home construction transactions' and on
31 line five, by striking the period and inserting the words
32 'but shall not cover new construction of single-family
33 dwellings or rebuilding all or substantially all of an
34 existing or preexisting single-family dwelling.'

35 Page 2, section 2.2 by striking all of lines seven and
36 eight and inserting in lieu thereof the following:

37 'unless: (a) it appears in printed or typed face larger
38 than the largest type used in the written contract,
39 apart'.

40 On page 2, section 2.4, by striking all of section 2.4
41 and inserting in lieu thereof a new section 2.4, to read
42 as follows:

43 '2.4 "Home Construction" means, for the purpose of
44 this Rule, the repair, remodeling or the building of
45 additions to existing single-family dwelling units,
46 including single-family homes, condominium units or
47 any other dwelling unit to be used by any person
48 primarily for personal or family use, but shall not
49 include new single-family home construction or the
50 rebuilding of all or substantially all of an existing or
51 preexisting single-family dwelling.'

52 Page 3, section 2.6, on line two thereof, after the
53 second comma by inserting the word 'replacement'.

54 Page 3, section 3., by striking the words 'and home
55 construction' from the section heading.

56 Page 3, section 3.1, lines one and two, by striking the
57 words 'or home construction'.

58 Page 4, section 3.1.4, on lines one and two thereof, by
59 striking the words 'or home construction'.

60 Page 4, section 3.1.8, on line two thereof, by striking
61 the words 'or home construction'.

62 Page 4, section 3.1.9, on lines two and three thereof,
63 by striking the words 'or home construction'.

64 Page 5, section 3.1.12, on lines one and two thereof,
65 by striking the words 'or home construction'.

66 Page 6, section 3.1.26, by striking all of section 3.1.26
67 and renumbering the subsequent subsections.

68 Page 7, section 3.1.29, on lines one and two thereof,
69 by striking the words 'or home construction'.

70 Page 7, section 3.1.29, on line six thereof, following the
71 word 'contract' by inserting a period and striking the
72 remainder of the section.

73 Page 7, following section 3.1.29 by adding a new
74 section to be designated section 3.1.29, to read as follows:

75 'failed to file a certificate in the office of the Clerk of
76 the County Commission in the county in which the
77 principal place of business of the seller is located, setting
78 forth the assumed name in or by which the business is
79 being conducted in conformity with the provisions of
80 Chapter 47, Article 8, Section 2 of the Code of West
81 Virginia, 1931, as amended.'

82 Page 7, section 3.2, on lines two and three thereof, by
83 striking the words, 'or home solicitation sale of home
84 construction' and the comma on line three.

85 Page 9, section 4.1, on line eight thereof, by deleting
86 the period and inserting the following:

87 'to the extent permitted by statute' and a period."

88 Page 10, section 4.2, on line 9 thereof, by striking the
89 period and inserting the following:

90 "to the extent permitted by statute" and a period.

91 (d) The legislative rules filed in the state register on
92 the twenty-third day of September, one thousand nine
93 hundred eighty-six, modified by the attorney general to
94 meet the objections of the legislative rule-making review
95 committee and refiled in the state register on the first
96 day of December, one thousand nine hundred eighty-six,
97 relating to the attorney general (prevention of unfair or
98 deceptive acts or practices in the sale of damaged goods
99 or products), are authorized.

100 (e) The legislative rules filed in the state register on
101 the twenty-third day of September, one thousand nine
102 hundred eighty-seven, modified by the attorney general
103 to meet the objections of the legislative rule-making
104 review committee and refiled in the state register on the
105 twenty-fifth day of November, one thousand nine
106 hundred eighty-seven, relating to the attorney general
107 (administration of preneed burial contracts) are autho-
108 rized with the following amendments set forth below:

109 On page 9, section 8.2 by striking the words "within
110 thirty days after the death of a contract beneficiary,"
111 and inserting in lieu thereof the following: "On or before
112 the first day of January and the first day of July of each
113 year," and after the word "provided" by striking the
114 comma and inserting in lieu thereof "after the death of
115 any contract beneficiary during the previous six-month
116 period,"

117 And,

118 On page 12, section 9.7 by striking all of 9.7,

119 And,

120 Beginning on page 15, by striking the entirety of
121 section 15,

122 And,

123 Beginning on page 18, by striking the entirety of
124 section 16, and by renumbering the remaining sections.

§64-2-12. West Virginia library commission.

1 The legislative rules filed in the state register on the
2 twenty-second day of October, one thousand nine

3 hundred eighty-five, modified by the West Virginia
4 library commission to meet the objections of the
5 legislative rule-making review committee and refiled in
6 the state register on the twelfth day of November, one
7 thousand nine hundred eighty-five, relating to the West
8 Virginia library commission (designating a grace period
9 for the return of library materials) are authorized.

§64-2-13. State treasurer.

1 The legislative rules filed in the state register on the
2 third day of January, one thousand nine hundred eighty-
3 four, relating to the state treasurer (establishment of
4 imprest funds) are authorized.

§64-2-14. Department of public safety.

1 (a) The legislative rules filed in the state register on
2 the twenty-third day of September, one thousand nine
3 hundred eighty-three, relating to the department of
4 public safety (general orders) are authorized with the
5 amendment set forth below:

6 Page 23, §9.10 remove the period at the end of the
7 sentence and add the words "or municipalities."

8 (b) The legislative rules filed in the state register on
9 the twenty-second day of June, one thousand nine
10 hundred eighty-four, modified by the department of
11 public safety to meet the objections of the legislative
12 rule-making review committee and refiled in the state
13 register on the fifth day of December, one thousand nine
14 hundred eighty-four, relating to the department of
15 public safety (commission on drunk driving) are
16 authorized.

§64-2-15. Air pollution control commission.

1 (a) The legislative rules filed in the state register on
2 the thirteenth day of August, one thousand nine hundred
3 eighty-two, relating to the air pollution control commis-
4 sion (series VII), are authorized.

5 (b) The legislative rules filed in the state register on
6 the thirteenth day of August, one thousand nine hundred
7 eighty-two, relating to air pollution control commission
8 (series XIX), are authorized.

9 (c) The legislative rules filed in the state register on
10 the sixteenth day of November, one thousand nine
11 hundred eighty-three, relating to the air pollution
12 control commission (emission standards for hazardous
13 air pollutants) (series XV) are authorized.

14 (d) The legislative rules filed in the state register on
15 the sixteenth day of November, one thousand nine
16 hundred eighty-three, relating to the air pollution
17 control commission (standards of performance for new
18 stationary sources) (series XVI) are authorized.

19 (e) The legislative rules filed in the state register on
20 the sixth day of January, one thousand nine hundred
21 eighty-four, relating to the air pollution control commis-
22 sion (to prevent and control air pollution from hazardous
23 waste treatment, storage or disposal facilities) (series
24 XXV), are authorized with the amendments set forth
25 below:

26 Page 3, §1.06, change the § title from "Enforcement"
27 to "Procedure"; place an "(a)" in front of the existing
28 paragraph and add the following:

29 "(b) Permit applications filed pursuant to this regu-
30 lation shall be processed in accordance with the
31 permitting procedures as set forth in code §20-5E of this
32 regulation. Permit procedures set forth in code §16-20
33 and any other regulation of this commission are not
34 applicable to any permit application filed pursuant to
35 this regulation."

36 Such rules shall also include a section which shall
37 read as follows:

38 "The commission shall report to the legislative rule-
39 making review committee as required by that commit-
40 tee, but in no event later than the first day of the regular
41 session of the Legislature in the year one thousand nine
42 hundred eighty-five. Such report shall include informa-
43 tion regarding the commission's data gathering efforts,
44 the development of compliance programs, the progress
45 in implementation, and such other matters as the
46 committee may require, pertaining to the regulations
47 hereby authorized."

48 (f) The legislative rules filed in the state register on
49 the ninth day of January, one thousand nine hundred
50 eighty-four, relating to the air pollution control commis-
51 sion (permits for construction and modification of
52 stationary sources of air pollution for the prevention of
53 significant deterioration) (series XIV) are authorized.

54 (g) The legislative rules filed in the state register on
55 the thirtieth day of December, one thousand nine
56 hundred eighty-eight, modified by the air pollution
57 control commission to meet the objections of the
58 legislative rule-making review committee and refiled in
59 the state register on the twenty-third day of February,
60 one thousand nine hundred eighty-nine, relating to the
61 air pollution control commission (prevention and control
62 of air pollution from hazardous waste treatment, storage
63 or disposal facilities) are authorized.

64 (h) The legislative rules filed in the state register on
65 the thirtieth day of December, one thousand nine
66 hundred eighty-eight, modified by the air pollution
67 control commission to meet the objections of the
68 legislative rule-making review committee and refiled in
69 the state register on the twenty-third day of February,
70 one thousand nine hundred eighty-nine, relating to the
71 air pollution control commission (good engineering
72 practice as applicable to stack heights) are authorized.

73 (i) The legislative rules filed in the state register on
74 the thirtieth day of December, one thousand nine
75 hundred eighty-eight, modified by the air pollution
76 control commission to meet the objections of the
77 legislative rule-making review committee and refiled in
78 the state register on the twenty-third day of February,
79 one thousand nine hundred eighty-nine, relating to the
80 air pollution control commission (TP-2, compliance test
81 procedures for regulation 2—to prevent and control
82 particulate air pollution from combustion of fuel in
83 indirect heat exchangers) are authorized.

§64-2-16. West Virginia hospital finance authority.

1 The legislative rules filed in the state register on the

2 tenth day of June, one thousand nine hundred eighty-
3 six, modified by the West Virginia hospital finance
4 authority to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the ninth day of January, one thousand nine
7 hundred eighty-seven, relating to the West Virginia
8 hospital finance authority (establishment of fee schedule
9 and cost allocation applicable to issuance of bonds), are
10 authorized.

§64-2-17. Teachers retirement board.

1 The legislative rules filed in the state register on the
2 eleventh day of August, one thousand nine hundred
3 eighty-two, relating to the teachers retirement board,
4 are authorized with the following amendments:

5 Section VI, subsection 6, D, (a)(ii) of the rules is to be
6 amended on line two by striking out the words "(3) thru
7 (7)" and inserting in lieu thereof the words "(3) thru
8 (13)"; Section VII, subsection 7, B, (c) of the rules is to
9 be amended on line three after the word "100" by
10 striking out the word "consecutive," and by redesignat-
11 ing the subsection as subsection "(a)"; and Section X,
12 subsection 10, A, (c), of the rules is to be amended on
13 line one after the word "physicians," by striking out the
14 words "of member's choice," and inserting in lieu thereof
15 the words "one selected by the Board and one selected
16 by the member."

§64-2-18. Commissioner of agriculture.

1 (a) The legislative rules filed in the state register on
2 the sixth day of April, one thousand nine hundred
3 eighty-three, relating to the commissioner of agriculture
4 (schedule of charges for inspection services: fruit) are
5 authorized.

6 (b) The legislative rules filed in the state register on
7 the third day of August, one thousand nine hundred
8 eighty-three, relating to the commissioner of agriculture
9 (licensing of auctioneers) are authorized.

10 (c) The legislative rules filed in the state register on
11 the eighth day of February, one thousand nine hundred
12 eighty-four, relating to the commissioner of agriculture

13 (conduct of beef industry self-improvement assessment
14 program referendum) are authorized.

15 (d) The legislative rules filed in the state register on
16 the fourth day of June, one thousand nine hundred
17 eighty-four, relating to the commissioner of agriculture
18 (feeding untreated garbage to swine) are authorized.

19 (e) The legislative rules filed in the state register on
20 the fourth day of June, one thousand nine hundred
21 eighty-four, relating to the commissioner of agriculture
22 (registration, taxation and control of dogs) are
23 authorized.

24 (f) The legislative rules filed in the state register on
25 the first day of November, one thousand nine hundred
26 eighty-four, relating to the commissioner of agriculture
27 (public markets) are authorized.

28 (g) The legislative rules filed in the state register on
29 the tenth day of September, one thousand nine hundred
30 eighty-four, relating to the commissioner of agriculture
31 (noxious weed rules) are authorized.

32 (h) The legislative rules filed in the state register on
33 the fourth day of June, one thousand nine hundred
34 eighty-four, relating to the commissioner of agriculture
35 (animal disease control) are authorized.

36 (i) The legislative rules filed in the state register on
37 the fifth day of January, one thousand nine hundred
38 eighty-four, relating to the commissioner of agriculture
39 (use of certain picloram products), are authorized.

40 (j) The legislative rules filed in the state register on
41 the eighth day of March, one thousand nine hundred
42 eighty-five, relating to the commissioner of agriculture
43 (increasing certain fees by rules and regulations) are
44 authorized.

45 (k) The legislative rules filed in the state register on
46 the thirteenth day of January, one thousand nine
47 hundred eighty-six, modified by the commissioner of
48 agriculture to meet the objections of the legislative rule-
49 making review committee and refiled in the state
50 register on the thirty-first day of January, one thousand

51 nine hundred eighty-six, relating to the commissioner of
52 agriculture (licensing of livestock dealers) are
53 authorized.

54 (l) The legislative rules filed in the state register on
55 the eighteenth day of June, one thousand nine hundred
56 eighty-six, modified by the commissioner of agriculture
57 to meet the objections of the legislative rule-making
58 review committee and refiled in the state register on the
59 fifth day of January, one thousand nine hundred eighty-
60 seven, relating to the commissioner of agriculture (West
61 Virginia pesticide use and application act), are
62 authorized.

63 (m) The legislative rules filed in the state register on
64 the eighteenth day of August, one thousand nine
65 hundred eighty-six, modified by the director of the
66 division of forestry of the department of agriculture to
67 meet the objections of the legislative rule-making review
68 committee and refiled in the state register on the fifth
69 day of January, one thousand nine hundred eighty-
70 seven, relating to the director of the division of forestry
71 of the department of agriculture (ginseng), are autho-
72 rized.

73 (n) The legislative rules filed in the state register on
74 the tenth day of April, one thousand nine hundred
75 eighty-seven, relating to the commissioner of agriculture
76 (schedule of charges for inspection services: fruit) are
77 authorized.

78 (o) The legislative rules filed in the state register on
79 the thirteenth day of August, one thousand nine hundred
80 eighty-seven, modified by the commissioner of agricul-
81 ture to meet the objections of the legislative rule-making
82 review committee and refiled in the state register on the
83 eighth day of September, one thousand nine hundred
84 eighty-seven, relating to the commissioner of agriculture
85 (animal disease control) are authorized.

86 (p) The legislative rules filed in the state register on
87 the fifteenth day of September, one thousand nine
88 hundred eighty-eight, relating to the commissioner of
89 agriculture (sale and distribution of commercial fertil-
90 izer) are authorized.

91 (q) The legislative rules filed in the state register on
92 the fifteenth day of September, one thousand nine
93 hundred eighty-eight, modified by the commissioner of
94 agriculture to meet the objections of the legislative rule-
95 making review committee and refiled in the state
96 register on the twenty-sixth day of October, one
97 thousand nine hundred eighty-eight, relating to the
98 commissioner of agriculture (animal disease control) are
99 authorized.

§64-2-19. West Virginia racing commission.

1 (a) The legislative rules filed in the state register on
2 the twenty-third day of April, one thousand nine
3 hundred eighty-two, relating to the West Virginia
4 racing commission (Rule 795), are authorized.

5 (b) The legislative rules filed in the state register on
6 the twenty-third day of April, one thousand nine
7 hundred eighty-two, relating to the West Virginia
8 racing commission (Rule 819), are authorized.

9 (c) The legislative rules filed in the state register on
10 the twenty-third day of April, one thousand nine
11 hundred eighty-two, relating to the West Virginia
12 racing commission (Rule 107), are authorized.

13 (d) The legislative rules filed with the legislative rule-
14 making review committee on the tenth day of January,
15 one thousand nine hundred eighty-three, relating to the
16 West Virginia racing commission (Rule 471), are
17 authorized.

18 (e) The legislative rules filed in the state register on
19 the tenth day of January, one thousand nine hundred
20 eighty-three, relating to the West Virginia racing
21 commission (Rule 526), are authorized.

22 (f) The legislative rules filed in the state register on
23 the twentieth day of September, one thousand nine
24 hundred eighty-three, relating to the West Virginia
25 racing commission (Rule 107) greyhound racing, are
26 authorized.

27 (g) The legislative rules filed in the state register on
28 the twentieth day of September, one thousand nine

29 hundred eighty-three, relating to the West Virginia
30 racing commission (Rule 108) greyhound racing are
31 authorized with the amendment set forth below:

32 Following the word "Association" insert a period and
33 strike the remainder of the sentence.

34 (h) The legislative rules filed in the state register on
35 the twentieth day of September, one thousand nine
36 hundred eighty-three, relating to the West Virginia
37 racing commission (Rule 108) thoroughbred racing are
38 authorized with the amendment set forth below:

39 Following the word "Association" insert a period and
40 strike the remainder of the sentence.

41 (i) The legislative rules filed in the state register on
42 the twentieth day of September, one thousand nine
43 hundred eighty-three, relating to the West Virginia
44 racing commission (Rule 392) greyhound racing, are
45 authorized.

46 (j) The legislative rules filed in the state register on
47 the twentieth day of September, one thousand nine
48 hundred eighty-three, relating to the West Virginia
49 racing commission (Rule 455) greyhound racing are
50 authorized.

51 (k) The legislative rules filed in the state register on
52 the twentieth day of September, one thousand nine
53 hundred eighty-three, relating to the West Virginia
54 racing commission (Rule 609A) greyhound racing are
55 authorized.

56 (l) The legislative rules filed in the state register on
57 the twentieth day of September, one thousand nine
58 hundred eighty-three, relating to the West Virginia
59 racing commission (Rule 627) greyhound racing are
60 authorized.

61 (m) The legislative rules filed in the state register on
62 the twentieth day of September, one thousand nine
63 hundred eighty-three, relating to the West Virginia
64 racing commission (Rule 845) thoroughbred racing are
65 authorized.

66 (n) The legislative rules filed in the state register on

67 the ninth day of November, one thousand nine hundred
68 eighty-four, relating to the West Virginia racing
69 commission (greyhound racing — Rule 628), are
70 authorized.

71 (o) The legislative rules filed in the state register on
72 the twenty-fifth day of September, one thousand nine
73 hundred eighty-four, relating to the West Virginia
74 racing commission (greyhound racing — Rule 672) are
75 authorized.

76 (p) The legislative rules filed in the state register on
77 the ninth day of November, one thousand nine hundred
78 eighty-four, relating to the West Virginia racing
79 commission (thoroughbred racing — Rule 808), are
80 authorized.

81 (q) The legislative rules filed in the state register on
82 the twenty-fifth day of September, one thousand nine
83 hundred eighty-four, relating to the West Virginia
84 racing commission (thoroughbred racing — Rule 843),
85 are authorized.

86 (r) The legislative rules filed in the state register on
87 the sixth day of August, one thousand nine hundred
88 eighty-four, relating to the West Virginia racing
89 commission (greyhound racing — Rule 845-I) are
90 authorized.

91 (s) The legislative rules filed in the state register on
92 the third day of September, one thousand nine hundred
93 eighty-seven, modified by the West Virginia racing
94 commission to meet the objections of the legislative rule-
95 making review committee and refiled in the state
96 register on the twenty-first day of December, one
97 thousand nine hundred eighty-seven, relating to the
98 West Virginia racing commission (greyhound racing)
99 are authorized.

100 (t) The legislative rules filed in the state register on
101 the thirty-first day of July, one thousand nine hundred
102 eighty-seven, modified by the West Virginia racing
103 commission to meet the objections of the legislative rule-
104 making review committee and refiled in the state
105 register on the eighteenth day of December, one

106 thousand nine hundred eighty-seven, relating to the
107 West Virginia racing commission (thoroughbred racing)
108 are authorized with the amendments set forth below:

109 On page fifty-five, Section 61.3(f), by striking all of
110 subsection (f) and inserting in lieu thereof the existing
111 provisions of subsection (f) as contained in 178 CSR 1,
112 which reads as follows:

113 All moneys held by any licensee for the payment of
114 outstanding and unredeemed pari-mutuel tickets, if not
115 claimed within ninety (90) days after the close of the
116 horse race meeting in connection with which the tickets
117 were issued, shall be turned over by the licensee to the
118 Racing Commission within fifteen (15) days after the
119 expiration of such ninety (90) day period and the
120 licensee shall give such information as the Racing
121 Commission may require concerning such outstanding
122 and unredeemed tickets; viz. The outs ledger enumer-
123 ating all outstanding tickets at the close of each meeting,
124 to contain a record of all tickets redeemed in the ninety
125 (90) day following period, together with all redeemed
126 tickets which shall bear the stamp of the cashier(s)
127 making redemption: A stamp indicating "Outs Ticket."
128 In addition, a statement to accompany said ledger and
129 tickets, setting forth the quantity and amount of each
130 denomination redeemed in the ninety (90) day period,
131 with a grand total indicating the sum paid in "Outs."
132 This sum subtracted from the outs on the closing day
133 to equal the remittance of the Association in settlement
134 of the "Out" account for the meeting.

135 (u) The legislative rules filed in the state register on
136 the ninth day of September, one thousand nine hundred
137 eighty-eight, relating to the West Virginia racing
138 commission (thoroughbred racing) are authorized.

139 (v) The legislative rules filed in the state register on
140 the eighteenth day of January, one thousand nine
141 hundred eighty-nine, modified by the West Virginia
142 racing commission to meet the objections of the legis-
143 lative rule-making review committee and refiled in the
144 state register on the twentieth day of February, one
145 thousand nine hundred eighty-nine, relating to the West

146 Virginia racing commission (greyhound racing) are
147 authorized.

§64-2-20. Water resources board.

1 (a) The legislative rules filed in the state register on
2 the sixth day of January, one thousand nine hundred
3 eighty-three, relating to the state water resources board
4 (underground injection control program), are
5 authorized.

6 (b) The legislative rules filed in the state register on
7 the fifteenth day of November, one thousand nine
8 hundred eighty-three, relating to the state water
9 resources board (special regulations), are authorized.

10 (c) The legislative rules filed in the state register on
11 the third day of August, one thousand nine hundred
12 eighty-three, relating to the state water resources board
13 (groundwater protection standards), are authorized.

14 (d) The legislative rules filed in the state register on
15 the fifteenth day of November, one thousand nine
16 hundred eighty-three, relating to the state water
17 resources board (state national pollutant discharge
18 elimination system (NPDES) program), are authorized.

19 (e) The Legislature hereby authorizes and directs the
20 state water resources board to promulgate rules relating
21 to water quality standards in exact conformity with the
22 rules relating to water quality standards tendered to the
23 secretary of state on the seventh day of March, one
24 thousand nine hundred eighty-four, by the executive
25 secretary of the state water resources board, to be
26 received and filed for inclusion in the state register by
27 the secretary of state.

28 (f) The legislative rules filed in the state register on
29 the seventeenth day of October, one thousand nine
30 hundred eighty-five, and modified by the state water
31 resources board to meet the objections of the legislative
32 rule-making review committee and refiled in the state
33 register on the twenty-fourth day of February, one
34 thousand nine hundred eighty-seven, relating to the
35 state water resources board (special regulations), are
36 authorized.

37 (g) The legislative rules filed in the state register on
38 the seventh day of January, one thousand nine hundred
39 eighty-five, modified by the water resources board to
40 meet the objections of the legislative rule-making review
41 committee and refiled in the state register on the
42 thirteenth day of February, one thousand nine hundred
43 eighty-five, relating to the water resources board (water
44 quality standards), are authorized.

45 (h) The legislative rules filed in the state register on
46 the seventeenth day of October, one thousand nine
47 hundred eighty-five, modified by the state water
48 resources board to meet the objections of the legislative
49 rule-making review committee and refiled in the state
50 register on the eighth day of January, one thousand nine
51 hundred eighty-seven, and further modified by the state
52 water resources board to meet the objections of the
53 legislative rule-making review committee and refiled in
54 the state register on the twenty-fourth day of February,
55 one thousand nine hundred eighty-seven, relating to the
56 state water resources board (water quality standards),
57 are authorized.

58 (i) The legislative rules filed in the state register on
59 the seventeenth day of October, one thousand nine
60 hundred eighty-five, modified by the state water
61 resources board to meet the objections of the legislative
62 rule-making review committee and refiled in the state
63 register on the eighth day of January, one thousand nine
64 hundred eighty-seven, and further modified by the state
65 water resources board to meet the objections of the
66 legislative rule-making review committee and refiled in
67 the state register on the twenty-fourth day of February,
68 one thousand nine hundred eighty-seven, relating to the
69 state water resources board (state national pollutant
70 discharge elimination system (NPDES) program), are
71 authorized.

72 (j) The legislative rules filed in the state register on
73 the seventeenth day of October, one thousand nine
74 hundred eighty-five, and modified by the state water
75 resources board to meet the objections of the legislative
76 rule-making review committee and refiled in the state
77 register on the twenty-fourth day of February, one

78 thousand nine hundred eighty-seven, relating to the
79 state water resources board (underground injection
80 control program), are authorized.

81 (k) The legislative rules filed in the state register on
82 the seventeenth day of October, one thousand nine
83 hundred eighty-five, and modified by the state water
84 resources board to meet the objections of the legislative
85 rule-making review committee and refiled in the state
86 register on the twenty-fourth day of February, one
87 thousand nine hundred eighty-seven, relating to the
88 state water resources board (special regulations), are
89 authorized.

90 (l) The legislative rules filed in the state register on
91 the thirtieth day of June, one thousand nine hundred
92 eighty-seven, relating to the water resources board
93 (water quality standards) are authorized.

94 (m) The legislative rules filed in the state register on
95 the fourteenth day of October, one thousand nine
96 hundred eighty-eight, relating to the water resources
97 board (water quality standards) are authorized.

§64-2-21. Workers' compensation commissioner.

1 (a) The legislative rule filed in the state register on
2 the fourteenth day of November, one thousand nine
3 hundred eighty-three, relating to the workers' compen-
4 sation commissioner (employers' excess liability fund)
5 are authorized.

6 (b) The legislative rules filed in the state register on
7 the twenty-fifth day of October, one thousand nine
8 hundred eighty-four, relating to the workers' compensa-
9 tion commissioner (time limits for the administrative
10 proceedings of adjudications and awards) are
11 authorized.

12 (c) The legislative rules filed in the state register on
13 the twenty-fifth day of October, one thousand nine
14 hundred eighty-four, modified by the workers' compen-
15 sation commissioner to meet the objections of the
16 legislative rule-making review committee and refiled in
17 the state register on the ninth day of January, one
18 thousand nine hundred eighty-five, relating to the

19 workers' compensation commissioner (self-insured
20 employers) are authorized.

21 (d) The legislative rules filed in the state register on
22 the twenty-fifth day of October, one thousand nine
23 hundred eighty-four, modified by the workers' compen-
24 sation commissioner to meet the objections of the
25 legislative rule-making review committee and refiled in
26 the state register on the fifth day of December, one
27 thousand nine hundred eighty-four, relating to the
28 workers' compensation commissioner (payment of
29 attorney's fees) are authorized.

30 (e) The legislative rules filed in the state register on
31 the sixth day of August, one thousand nine hundred
32 eighty-five, relating to the workers' compensation
33 commissioner (standards for medical examination in
34 occupational pneumoconiosis claims) are authorized
35 with the amendments set forth below:

36 On page 1, the second and third unnumbered para-
37 graphs on page one are amended to read as follows:

38 When two or more ventilatory function tests per-
39 formed in reasonably close proximity in time produce
40 differing but acceptable results, the Commissioner, at
41 the request of the O. P. Board, may direct the parties
42 to furnish additional evidence and/or order additional
43 testing at the laboratory utilized by the O. P. Board or
44 other laboratories, all for the purpose of determining
45 whether any of the results are unreliable or incorrect
46 or are clearly attributable to some identifiable disease
47 or illness other than occupational pneumoconiosis.

48 When blood gas studies are performed and abnormal
49 values are obtained and thereafter new blood gas studies
50 are performed and normal or significantly higher values
51 are further obtained, the Commissioner, at the request
52 of the O. P. Board, may direct the parties to furnish
53 additional evidence and/or order additional studies at
54 the laboratory utilized by the O. P. Board or other
55 laboratories, all for the purpose of determining whether
56 any of the values are unreliable or incorrect or are
57 clearly attributable to some identifiable disease or
58 illness other than occupational pneumoconiosis.

59 And on page 7, paragraph (11) is amended to read as
60 follows:

61 (11) It is recognized that arterial blood gas studies
62 done in laboratories throughout this state are obtained
63 at different altitudes. Only by "standardizing" for
64 altitude can an equitable assessment be made of
65 impairment when values of arterial oxygen are being
66 measured at remarkably different altitudes. Therefore,
67 the results reported from laboratories should include the
68 name of the laboratory and the date and time of the
69 testing, altitude of the laboratory and barometric
70 pressure at the laboratory on the day the samples were
71 collected. The O. P. Board will evaluate the arterial
72 blood gas values by converting those values to the
73 average altitude of Charleston, West Virginia. For this
74 purpose, it shall be sufficient to add 1 mmHg to each
75 arterial oxygen tension for each 300 feet or fraction
76 thereof that the testing laboratory is located above the
77 average altitude of Charleston, because the relationship
78 of barometric pressure (altitude) and alveolar oxygen is
79 approximately linear up to 4,000 feet as long as the
80 subject breathes room air.

81 As an example, Bluefield is located approximately
82 2,600 feet above sea level. Charleston is approximately
83 600 feet above sea level. Thus, arterial oxygen values
84 obtained in Bluefield should have 6.67 mmHg added to
85 them before applying the table to them to obtain
86 "percent impairment." The calculations are as follows:

87 "Bluefield (2,600') minus Charleston (600') equals
88 2,000' differential 2,000' divided by 300' altitude equals
89 6.67

90 6.67 multiplied by 1 mmHg per 300' altitude equals
91 6.67 mmHg."

92 (f) The legislative rules filed in the state register on
93 the ninth day of August, one thousand nine hundred
94 eighty-five, modified by the workers' compensation
95 commissioner to meet the objections of the legislative
96 rule-making review committee and refiled in the state
97 register on the fifteenth day of January, one thousand
98 nine hundred eighty-six, relating to the workers'

99 compensation commissioner (administration of the coal-
100 workers' pneumoconiosis fund) are authorized.

§64-2-22. State lottery commission.

1 The legislative rules filed in the state register on the
2 twenty-first day of April, one thousand nine hundred
3 eighty-seven, modified by the state lottery commission
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 fourteenth day of August, one thousand nine hundred
7 eighty-seven, relating to the state lottery commission
8 (state lottery) are authorized.

§64-2-23. State fire commission.

1 (a) The legislative rules filed in the state register on
2 the third day of January, one thousand nine hundred
3 eighty-four, relating to the state fire commission (state
4 fire code) are authorized with the amendments set forth
5 below:

6 Page 1, section 106, line 1, after the word "to" add the
7 words "personal care homes caring for five or less
8 patients or"; and

9 Page 26, section 11.06 (3) A. (3). Strike the period at
10 the end of the sentence and add the words "except for
11 existing sleeping rooms owned by the state and located
12 in dormitories or state parks."

13 (b) The legislative rules filed in the state register on
14 the first day of August, one thousand nine hundred
15 eighty-six, modified by the state fire commission to meet
16 the objection of the legislative rule-making review
17 committee and refiled in the state register on the
18 twenty-eighth day of October, one thousand nine
19 hundred eighty-six, relating to the state fire commission
20 (hazardous substance emergency response training
21 program), are authorized.

22 (c) The legislative rules filed in the state register on
23 the sixth day of September, one thousand nine hundred
24 eighty-eight, modified by the state fire commission to
25 meet the objections of the legislative rule-making review
26 committee and refiled in the state register on the eighth

27 day of December, one thousand nine hundred eighty-
28 eight, relating to the state fire commission (state
29 building code) are authorized.

§64-2-24. Civil service commission.

1 (a) The legislative rules filed in the state register on
2 the nineteenth day of November, one thousand nine
3 hundred eighty-six, modified by the civil service
4 commission to meet the objection of the legislative rule-
5 making review committee and refiled in the state
6 register on the fifteenth day of December, one thousand
7 nine hundred eighty-six, relating to the civil service
8 commission (civil service system), are authorized.

9 (b) The legislative rules filed in the state register on
10 the first day of November, one thousand nine hundred
11 eighty-eight, modified by the civil service commission to
12 meet the objections of the legislative rule-making review
13 committee and refiled in the state register on the
14 twenty-third day of February, one thousand nine
15 hundred eighty-nine, relating to the civil service
16 commission (civil service system) are authorized with
17 the amendments set forth below:

18 On page fifteen, section 5.05(d), after the words
19 "established in" by striking out the remainder of the
20 sentence and inserting in lieu thereof the words
21 "Chapter 29-6A of the Code of West Virginia, as
22 amended."

23 On page fifteen, section 5.06, after the words "estab-
24 lished in" by striking out the remainder of the sentence
25 and inserting in lieu thereof the words "Chapter 29-6A
26 of the Code of West Virginia, as amended."

27 And

28 On pages sixteen and seventeen by deleting all of
29 section 5.07.

30 And,

31 On page 46, section 13(f) line 2 by striking the words
32 "previously held".

§64-2-25. Secretary of state.

1 (a) The legislative rules filed in the state register on
2 the fifteenth day of April, one thousand nine hundred
3 eighty-five, modified by the secretary of state to meet
4 the objections of the legislative rule-making review
5 committee and refiled in the state register on the eighth
6 day of October, one thousand nine hundred eighty-five,
7 relating to the secretary of state (standard size and
8 format for rules and related documents filed in the
9 secretary of state's office) are authorized.

10 (b) The legislative rules filed in the state register on
11 the seventeenth day of August, one thousand nine
12 hundred eighty-seven, modified by the secretary of state
13 to meet the objections of the legislative rule-making
14 review committee and refiled in the state register on the
15 twenty-third day of September, one thousand nine
16 hundred eighty-seven, relating to the secretary of state
17 (standard size and format for rules and procedures for
18 publication of the state register or parts of the state
19 register) are authorized.

**§64-2-26. West Virginia state board of registration for
professional engineers.**

1 (a) The legislative rules filed in the state register on
2 the twenty-ninth day of November, one thousand nine
3 hundred eighty-five, modified by the West Virginia
4 state board of registration for professional engineers to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-eighth day of January, one thousand nine
8 hundred eighty-six, relating to the West Virginia state
9 board of registration for professional engineers (legisla-
10 tive rules governing the West Virginia state board of
11 registration for professional engineers) are authorized.

12 (b) The legislative rules filed in the state register on
13 the twenty-third day of December, one thousand nine
14 hundred eighty-seven, modified by the West Virginia
15 state board of registration for professional engineers to
16 meet the objections of the legislative rule-making review
17 committee and refiled in the state register on the
18 twenty-ninth day of January, one thousand nine hundred
19 eighty-eight, relating to the West Virginia state board

20 of registration for professional engineers (rules of the
21 West Virginia state board of registration for profes-
22 sional engineers) are authorized.

§64-2-27. State board of examiners of land surveyors.

1 The legislative rules filed in the state register on the
2 thirty-first day of July, one thousand nine hundred
3 eighty-seven, modified by the state board of examiners
4 of land surveyors to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the twenty-eighth day of January, one
7 thousand nine hundred eighty-eight, relating to the state
8 board of examiners of land surveyors (practice of land
9 surveying in West Virginia) are authorized.

**§64-2-28. State boards of examination or registration;
West Virginia board of chiropractic
examiners.**

1 The legislative rules filed in the state register on the
2 twenty-sixth day of October, one thousand nine hundred
3 eighty-seven, modified by the West Virginia board of
4 chiropractic examiners to meet the objections of the
5 legislative rule-making review committee and refiled in
6 the state register on the twenty-seventh day of January,
7 one thousand nine hundred eighty-eight, relating to the
8 West Virginia board of chiropractic examiners (West
9 Virginia board of chiropractic examiners) are autho-
10 rized.

§64-2-29. Radiologic technology board of examiners.

1 The legislative rules filed in the state register on the
2 twenty-fourth day of January, one thousand nine
3 hundred eighty-four, relating to the radiologic technol-
4 ogy board of examiners are authorized.

§64-2-30. Board of medicine.

1 (a) The legislative rules filed in the state register on
2 the twelfth day of May, one thousand nine hundred
3 eighty-three, relating to the board of medicine (licens-
4 ing, disciplinary and complaint procedures; podiatry;
5 physicians assistants) are authorized with the modifica-
6 tions set forth below:

7 "§24.12.

8 (b) It shall be the responsibility of the supervising
9 physician to obtain consent in writing from the patient
10 before Type A physician assistants employed in a
11 satellite clinic may render general medical or surgical
12 services, except in emergencies.

13 §24.16.

14 (c) No physician assistant shall render nonemergency
15 outpatient medical services until the patient has been
16 informed that the individual providing care is a
17 physician assistant."

18 (b) The legislative rules filed in the state register on
19 the twenty-sixth day of November, one thousand nine
20 hundred eighty-five, modified by the board of medicine
21 to meet the objections of the legislative rule-making
22 review committee and refiled in the state register on the
23 seventeenth day of January, one thousand nine hundred
24 eighty-six, relating to the board of medicine (licensing,
25 disciplinary and complaint procedures; podiatry; physi-
26 cians assistants) are authorized.

27 (c) The legislative rules filed in the state register on
28 the eighth day of March, one thousand nine hundred
29 eighty-five, modified by the West Virginia board of
30 medicine to meet the objections of the legislative rule-
31 making review committee and refiled in the state
32 register on the eighteenth day of December, one
33 thousand nine hundred eighty-five, relating to the West
34 Virginia board of medicine (rules governing the
35 approval of medical schools not accredited by the liaison
36 committee on medical education) are authorized.

37 (d) The legislative rules filed in the state register on
38 the third day of June, one thousand nine hundred eighty-
39 seven, relating to the board of medicine (fees for services
40 rendered by the board of medicine) are authorized.

41 (e) The legislative rules filed in the state register on
42 the sixteenth day of September, one thousand nine
43 hundred eighty-eight, modified by the board of medicine
44 to meet the objections of the legislative rule-making
45 review committee and refiled in the state register on the

46 twenty-fourth day of February, one thousand nine
47 hundred eighty-nine, relating to the board of medicine
48 (dispensing of legend drugs by physicians and podia-
49 trists) are authorized with the following amendments:

50 Section 2.6 to read as follows: Dispense means to
51 deliver a legend drug to an ultimate user or research
52 subject by or pursuant to the lawful order of a physician
53 or podiatrist, including the prescribing, packaging,
54 labeling, administering or compounding necessary to
55 prepare the drug for that delivery.

56 Section 3.3 to read as follows: Physicians or podiatrists
57 who are not registered with the Board as dispensing
58 physicians may not dispense legend drugs. However, the
59 following activities by a physician or podiatrist shall be
60 exempt from the requirements of section 3 through 8
61 applicable to dispensing physicians:

62 a. Legend drugs administered to the patient, which
63 are not controlled substance when an appropriate record
64 is made in the patient's chart.

65 b. Professional samples distributed free of charge by
66 a physician or podiatrist or certified physician assistant
67 under his or her supervision to the patient when an
68 appropriate record is made in the patient's chart; or

69 c. Legend drugs which are not controlled substances
70 provided by free clinics or under West Virginia state
71 authorized programs, including the medicaid, family
72 planning, maternal and child health, and early and
73 periodic screening and diagnosis and treatment pro-
74 grams: *Provided*, That all labeling provisions of section
75 8 shall be applicable except the requirements of section
76 8.3 (a).

§64-2-31. Board of embalmers and funeral directors.

1 (a) The legislative rules filed in the state register on
2 the twenty-seventh day of July, one thousand nine
3 hundred eighty-four, modified by the board of em-
4 balmers and funeral directors to meet the objections of
5 the legislative rule-making review committee and
6 refiled in the state register on the ninth day of January,
7 one thousand nine hundred eighty-five, relating to the

8 board of embalmers and funeral directors (apprentice-
9 ship), are authorized.

10 (b) The legislative rules filed in the state register on
11 the sixteenth day of October, one thousand nine hundred
12 eighty-five, modified by the board of embalmers and
13 funeral directors to meet the objections of the legislative
14 rule-making review committee and refiled in the state
15 register on the eighteenth day of July, one thousand nine
16 hundred eighty-six, relating to the board of embalmers
17 and funeral directors (governing the board of em-
18 balmers and funeral directors), are authorized.

§64-2-32. Board of examiners for registered professional nurses.

1 The legislative rules filed in the state register on the
2 thirteenth day of September, one thousand nine hundred
3 eighty-three, relating to the board of examiners for
4 registered professional nurses (qualifications of gradu-
5 ates of foreign nursing schools for admission to the
6 professional nurse licensing examination) are autho-
7 rized.

§64-2-33. West Virginia board of examiners for licensed practical nurses.

1 (a) The legislative rules filed in the state register on
2 the thirtieth day of July, one thousand nine hundred
3 eighty-six, modified by the West Virginia board of
4 examiners for licensed practical nurses to meet the
5 objections of the legislative rule-making review commit-
6 tee and refiled in the state register on the thirtieth day
7 of September, one thousand nine hundred eighty-six,
8 relating to the West Virginia board of examiners for
9 licensed practical nurses (policies relating to licensure
10 of the licensed practical nurse), are authorized.

11 (b) The legislative rules filed in the state register on
12 the thirtieth day of July, one thousand nine hundred
13 eighty-six, relating to the West Virginia board of
14 examiners for licensed practical nurses (legal standards
15 of nursing practice for the licensed practical nurse), are
16 authorized.

17 (c) The legislative rules filed in the state register on

18 the thirtieth day of July, one thousand nine hundred
19 eighty-six, relating to the West Virginia board of
20 examiners for licensed practical nurses (fees for services
21 rendered by the board), are authorized.

§64-2-34. West Virginia housing development fund.

1 The legislative rules filed in the state register on the
2 twenty-seventh day of December, one thousand nine
3 hundred eighty-two, relating to the West Virginia
4 housing development fund (single-family mortgage
5 loans), are authorized.

§64-2-35. Jail and prison standards commission.

1 (a) The legislative rules filed in the state register on
2 the fifth day of November, one thousand nine hundred
3 eighty-seven, relating to the jail and prison standards
4 commission (West Virginia minimum standards for
5 construction, operation, and maintenance of jails) are
6 authorized.

7 (b) The legislative rules filed in the state register on
8 the ninth day of May, one thousand nine hundred eighty-
9 eight, modified by the jail and prison standards
10 commission to meet the objections of the legislative rule-
11 making review committee and refiled in the state
12 register on the twenty-seventh day of February, one
13 thousand nine hundred eighty-nine, relating to the jail
14 and prison standards commission (West Virginia
15 minimum standards for construction, operation and
16 maintenance of holding facilities) are authorized.

17 (c) The legislative rules filed in the state register on
18 the eighteenth day of March, one thousand nine hundred
19 eighty-eight, modified by the jail and prison standards
20 commission to meet the objections of the legislative rule-
21 making review committee and refiled in the state
22 register on the twenty-seventh day of February, one
23 thousand nine hundred eighty-nine, relating to the jail
24 and prison standards commission (West Virginia
25 minimum standards for construction, operation and
26 maintenance of prisons) are authorized.

27 (d) The Legislature hereby authorizes and directs the
28 jail and prison standards commission to amend its rules

29 relating to West Virginia minimum standards for
30 construction, operation, and maintenance of jails which
31 were filed in the code of state regulations (95 CSR 1)
32 on the fifth day of April, one thousand nine hundred
33 eighty-eight, with the following amendments set forth
34 below:

35 On page 7, §8.10 by striking out in the first sentence,
36 after the word "house", the following words: "no less
37 than four (4) and

38 On page 30 by adding a new section 17.21 to read as
39 follows:

40 17.21 Visitation to Home County. To the extent that
41 the previous subsections provide requirements for
42 visitation with inmates housed in regional jail facilities,
43 it is the intent that such requirements apply only to
44 visitation provided in a regional jail facility. When
45 visitation with family and friends is required to be
46 provided to a person incarcerated in a regional jail
47 facility in a location other than the regional jail, the
48 following provisions shall apply:

49 17.21.1 The regional jail need not assume the respon-
50 sibility for transportation to the home county seat of a
51 person incarcerated in the regional jail facility for
52 visitation with their family and friends unless that
53 person has had no visits from family and friends in the
54 previous three months.

55 17.21.2 In providing any transportation under subsec-
56 tion 17.21.1 the regional jail has the right to schedule
57 such transportation for visits with family and friends of
58 the person incarcerated in a manner which would utilize
59 to the utmost the regional jail's regularly scheduled
60 trips to each of the respective counties it serves,
61 including the scheduling of round-trips, so long as a
62 minimum of 30 minutes is available for visitation.

63 17.21.3 The regional jail need not assume any respon-
64 sibility for transportation under subsection 17.21.1 when
65 the distance from the regional jail to the respective
66 county seat is less than two hour's driving time.

§64-2-36. Commissioner of banking.

1 (a) The legislative rules filed in the state register on
2 the eleventh day of June, one thousand nine hundred
3 eighty-two, relating to commissioner of banking (com-
4 munication terminals and interchange systems), are
5 authorized.

6 (b) The legislative rules filed in the state register on
7 the fifteenth day of December, one thousand nine
8 hundred eighty-three, relating to the commissioner of
9 banking (consumer credit sales), are authorized.

10 (c) The legislative rules filed in the state register on
11 the nineteenth day of August, one thousand nine
12 hundred eighty-three, relating to the commissioner of
13 banking (legal lending limit) are authorized.

14 (d) The legislative rules filed in the state register on
15 the seventh day of November, one thousand nine
16 hundred eighty-six, modified by the commissioner of
17 banking to meet the objections of the legislative rule-
18 making review committee and refiled in the state
19 register on the eleventh day of December, one thousand
20 nine hundred eighty-six, relating to the commissioner of
21 banking (implementing the West Virginia community
22 reinvestment act), are authorized.

23 (e) The legislative rules filed in the state register on
24 the twenty-fifth day of October, one thousand nine
25 hundred eighty-eight, modified by the commissioner of
26 banking to meet the objections of the legislative rule-
27 making review committee and refiled in the state
28 register on the seventh day of December, one thousand
29 nine hundred eighty-eight, relating to the commissioner
30 of banking (subsidiary bank holding the stock of its
31 parent company as collateral) are authorized.

§64-2-37. State auditor.

1 (a) The legislative rules filed in the state register on
2 the twenty-first day of December, one thousand nine
3 hundred eighty-three, relating to the state auditor,
4 securities commissioner (broker-dealers, agents and
5 investment and advisors) are authorized with the
6 amendments set forth below:

7 Section 14.06 Delete the words "as subsequently

8 amended" and reinsert the words "as amended March
9 30, 1982."

10 Section 14.07 Place a period after "1976" and delete
11 the words "as subsequently amended."

12 (b) The legislative rules filed in the state register on
13 the eighteenth day of January, one thousand nine
14 hundred eighty-five, relating to the state auditor,
15 securities commissioner (filing fee) are authorized.

§64-2-38. Board of risk and insurance management.

1 (a) The legislative rules filed in the state register on
2 the twenty-first day of October, one thousand nine
3 hundred eighty-three, relating to the board of risk and
4 insurance management (mine subsidence) are
5 authorized.

6 (b) The legislative rules filed in the state register on
7 the twenty-sixth day of November, one thousand nine
8 hundred eighty-five, modified by the state board of risk
9 and insurance management to meet the objections of the
10 legislative rule-making review committee and refiled in
11 the state register on the eighth day of December, one
12 thousand nine hundred eighty-six, relating to the state
13 board of risk and insurance management (mine subsi-
14 dence insurance program), are authorized.

**§64-2-39. Department of human services; director of the
child advocate office.**

1 (a) The Legislature hereby authorizes and directs the
2 director of the child advocate office of the department
3 of human services to promulgate rules relating to
4 guidelines for child support awards in exact conformity
5 with the rules relating to guidelines for child support
6 awards tendered to the secretary of state by the Senate
7 committee on the judiciary on the twelfth day of March,
8 one thousand nine hundred eighty-eight.

9 (b) The legislative rules filed in the state register on
10 the twenty-seventh day of May, one thousand nine
11 hundred eighty-eight, modified by the director of the
12 child advocate office of the department of human
13 services to meet the objections of the legislative rule-

14 making review committee and refiled in the state
15 register on the twenty-third day of September, one
16 thousand nine hundred eighty-eight, relating to the
17 director of the child advocate office of the department
18 of human services (interstate income withholding) are
19 authorized.

20 (c) The legislative rules filed in the state register on
21 the twenty-seventh day of May, one thousand nine
22 hundred eighty-eight, modified by the director of the
23 child advocate office of the department of human
24 services to meet the objections of the legislative rule-
25 making review committee and refiled in the state
26 register on the twenty-third day of September, one
27 thousand nine hundred eighty-eight, relating to the
28 director of the child advocate office of the department
29 of human services (obtaining support from federal and
30 state income tax refunds) are authorized.

31 (d) The legislative rules filed in the state register on
32 the twenty-seventh day of May, one thousand nine
33 hundred eighty-eight, modified by the director of the
34 child advocate office of the department of human
35 services to meet the objections of the legislative rule-
36 making review committee and refiled in the state
37 register on the twenty-third day of September, one
38 thousand nine hundred eighty-eight, relating to the
39 director of the child advocate office of the department
40 of human services (termination of income withholding)
41 are authorized.

42 (e) The legislative rules filed in the state register on
43 the twenty-seventh day of May, one thousand nine
44 hundred eighty-eight, modified by the director of the
45 child advocate office of the department of human
46 services to meet the objections of the legislative rule-
47 making review committee and refiled in the state
48 register on the twenty-third day of September, one
49 thousand nine hundred eighty-eight, relating to the
50 director of the child advocate office of the department
51 of human services (providing information to credit
52 reporting agencies) are authorized.

§64-2-40. Public employees insurance board.

1 (a) The legislative rules filed in the state register on
2 the sixteenth day of May, one thousand nine hundred
3 eighty-three, relating to the public employees insurance
4 board (public employees insurance plan) are authorized
5 with the amendments set forth below:

6 §6.03. — In the second sentence delete the words
7 “Executive Secretary” and insert the word “Board.”

8 (b) The legislative rules filed in the state register on
9 the twenty-seventh day of September, one thousand nine
10 hundred eighty-four, modified by the public employees
11 insurance board to meet the objections of the legislative
12 rule-making review committee and refiled in the state
13 register on the fourth day of March, one thousand nine
14 hundred eighty-five, relating to the public employees
15 insurance board (credit for accrued sick/annual leave
16 and optional life insurance) are authorized.

17 (c) The legislative rules filed in the state register on
18 the twelfth day of September, one thousand nine
19 hundred eighty-four, relating to the public employees
20 insurance board (late enrollment in the public em-
21 ployees insurance program) are authorized with the
22 amendments set forth below:

23 §2.01(b) shall read as follows:

24 “(b) ‘children’ shall mean unmarried children be-
25 tween birth and age nineteen and shall include: (1) The
26 employee’s natural children, (2) legally adopted child-
27 ren, including children living with the employee during
28 the period of probation, (3) stepchildren residing in the
29 employee’s household and (4) other children fully
30 dependent upon the employee for support and mainte-
31 nance and residing in the household of which the
32 employee is head and actually being supported by the
33 employee. Children may be included after the attain-
34 ment of age nineteen, but not beyond the attainment of
35 age twenty-five, if they are enrolled as full-time
36 students, are unmarried, and are dependent upon the
37 employee for support. Children may also be included
38 after the attainment of age nineteen while incapable of
39 self-support because of mental illness, mental retarda-
40 tion or a permanent physical disability, if the child was

41 dependent upon the employee for support and mainte-
42 nance at the onset of the mental illness, mental
43 retardation or permanent physical disability. For the
44 purpose of this section, mental illness includes addiction
45 as defined in Code 27-1-11 as is defined as a manifes-
46 tation in a person of significantly impaired capacity to
47 maintain acceptable levels of functioning in the areas of
48 intellect, emotion and physical well-being, only if such
49 impairment renders the person dangerous to himself or
50 others or such person is substantially unable to protect
51 himself from significant hazard: *Provided*, That child-
52 ren included because of addiction as hereinbefore
53 defined shall not be included beyond the attainment of
54 age twenty-five."

55 On page six, at 4.01(g)(2) shall read as follows:

56 The end of any 12 month period after enrollment
57 during which no diagnosis or treatment is received, and
58 no expenses are incurred for care of the injury, illness
59 or related conditions.

60 Also, insert a new section, designated section 5.07, to
61 read as follows:

62 "5.07. — Coverage for dependents shall terminate at
63 the end of the month in which they no longer meet the
64 definition of 'dependent' as set forth in section 2.01 of
65 these rules."

§64-2-41. Employee suggestion award board.

1 The legislative rules filed in the state register on the
2 twenty-third day of July, one thousand nine hundred
3 eighty-two, relating to the employee suggestion award
4 board (public employee suggestion program), are
5 authorized.

§64-2-42. Commissioner of commerce.

1 The legislative rules filed in the state register on the
2 eighteenth day of February, one thousand nine hundred
3 eighty-seven, modified by the commissioner of com-
4 merce to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the ninth day of October, one thousand nine

7 hundred eighty-seven, relating to the commissioner of
8 commerce (public use of West Virginia state parks,
9 forests, and hunting and fishing areas) are authorized
10 with the amendments as set forth below:

11 On page 1, section 2.1 after the words "fishing area."
12 add "This rule does not apply to the erection of
13 temporary blinds or tree stands in public hunting
14 areas."

15 And, on page 3, section 2.12 after the word "guests"
16 by adding "licensed hunters and fishermen while
17 hunting or fishing".

18 And, on page 5, section 2.22 by adding at the end of
19 the section the following sentence: "Any person may
20 apply to the Superintendent of the park for a special
21 event permit and pay an application fee for use of
22 firearms during historical reenactments, or the use of
23 hay, straw, boughs, pine needles or similar materials for
24 special events. The Park Superintendent may issue a
25 permit to limit areas of use of any of these exceptions
26 and require damage assessments, if necessary."

27 On page 8, section 4.5 by deleting the word "water"
28 and inserting in lieu thereof the word "swimming pool"
29 and on page 9 section 4.5 after the word "water." add
30 the following "These restrictions do not apply to
31 swimming areas which are natural bodies of water."

§64-2-43. West Virginia industrial and trade jobs development corporation.

1 The legislative rules filed in the state register on the
2 fifteenth day of October, one thousand nine hundred
3 eighty-six, modified by the West Virginia industrial and
4 trade jobs development corporation to meet the objec-
5 tions of the legislative rule-making review committee
6 and refiled in the state register on the twelfth day of
7 January, one thousand nine hundred eighty-seven,
8 relating to the West Virginia industrial and trade jobs
9 development corporation (general administration of the
10 West Virginia capital company act and establishment of
11 application procedures to implement the act), are
12 authorized.

§64-2-44. Alcohol beverage control commission.

1 (a) The legislative rules filed in the state register on
2 the thirtieth day of December, one thousand nine
3 hundred eighty-two, relating to the alcohol beverage
4 control commission (transportation of alcoholic beverages), are authorized.

6 (b) The legislative rules filed in the state register on
7 the thirteenth day of August, one thousand nine hundred
8 eighty-two, relating to the alcohol beverage control
9 commissioner (lighting of licensed premises), are
10 authorized.

11 (c) The legislative rules filed in the state register on
12 the thirteenth day of August, one thousand nine hundred
13 eighty-two, relating to the alcohol beverage control
14 commissioner (kitchen and dining facilities), are
15 authorized.

16 (d) The legislative rules filed in the state register on
17 the twenty-fourth day of August, one thousand nine
18 hundred eighty-two, relating to the alcohol beverage
19 control commissioner (refusal to license private clubs),
20 are authorized with the exception of subsection (a) of the
21 rules which shall be promulgated as set forth below in
22 this section as follows:

23 (a) For purposes of this regulation, the commissioner
24 may refuse to grant any license if he has reasonable
25 cause to believe, as indicated by documented evidence,
26 that the applicant, or any officer, director or manager
27 thereof, or shareholder owning twenty percent or more
28 of its capital stock, beneficial or otherwise, or other
29 person conducting or managing the affairs of the
30 applicant or of the proposed licensed premises, in whole
31 or part:

32 (1) Is not a person of good moral character or repute;

33 (2) Has maintained a noisy, loud, disorderly or
34 unsanitary establishment;

35 (3) Has demonstrated, either by his police record or
36 by his record as former licensee under chapter sixty or
37 chapter eleven, article sixteen of the West Virginia code,

38 a lack of respect for law and order, generally, or for the
39 laws and rules governing the sale and distribution of
40 alcoholic beverages or nonintoxicating beer;

41 (4) Has the general reputation of drinking alcoholic
42 beverages to excess, or is addicted to the use of
43 narcotics;

44 (5) Has misrepresented a material fact in applying to
45 the commissioner for a license.

46 For purposes of this regulation, the commissioner
47 shall refuse to grant any license if he has reasonable
48 cause to believe, as indicated by documented evidence
49 that the applicant, or any officer, director or manager
50 thereof, or shareholder owning twenty percent or more
51 of its capital stock, beneficial or otherwise, or other
52 person conducting or managing the affairs of the
53 applicant or of the proposed licensed premises, in whole
54 or part:

55 (1) Is not eighteen years of age or older;

56 (2) Has been convicted of a felony or other crime
57 involving moral turpitude, and, upon such conviction,
58 the applicant shall not be eligible for licensure within
59 five years next preceding successful completion of all
60 conditions of probation, discharge from parole supervi-
61 sion or expiration of sentence;

62 (3) Has been convicted of violating the liquor laws of
63 any state or the United States, and, upon such convic-
64 tion, the applicant shall not be eligible for licensure
65 within five years next preceding successful completion
66 of all conditions of probation, discharge from parole
67 supervision or expiration of sentence;

68 (4) Has had any license revoked under the liquor laws
69 of any state or the United States within five years next
70 preceding the filing date of the application;

71 (5) Is not the legitimate owner of the business
72 proposed to be licensed, or other persons have ownership
73 interests in the business which have not been disclosed;

74 (6) Is a person to whom alcoholic beverages may not
75 be sold under the provisions of chapter sixty of the West
76 Virginia code;

- 77 (7) Has been adjudicated an incompetent;
- 78 (8) Is an officer or employee of the alcohol beverage
79 control commissioner of West Virginia; or
- 80 (9) Is violating or allowing the violation of any
81 provision of chapter sixty, chapter sixty-one or chapter
82 eleven, article sixteen of the code in its establishment
83 at the time its application for a license is pending.

§64-2-45. West Virginia board of hearing aid dealers.

- 1 The legislative rules filed in the state register on the
2 twenty-sixth day of November, one thousand nine
3 hundred eighty-five, modified by the West Virginia
4 board of hearing aid dealers to meet the objections of
5 the legislative rule-making review committee and
6 refiled in the state register on the twenty-eighth day of
7 January, one thousand nine hundred eighty-six, relating
8 to the West Virginia board of hearing aid dealers (rules
9 governing the West Virginia board of hearing aid
10 dealers) are authorized.

§64-2-46. Nursing home administrators licensing board.

- 1 The legislative rules filed in the state register on the
2 eighteenth day of October, one thousand nine hundred
3 eighty-five, modified by the nursing home administra-
4 tors licensing board to meet the objections of the
5 legislative rule-making review committee and refiled in
6 the state register on the twenty-eighth day of January,
7 one thousand nine hundred eighty-six, relating to the
8 nursing home administrators licensing board (governing
9 nursing home administrators) are authorized.

§64-2-47. Board of examiners of psychologist.

- 1 (a) The legislative rules filed in the state register on
2 the twentieth day of December, one thousand nine
3 hundred eighty-four, relating to the board of examiners
4 of psychologist (examination fee) are authorized.
- 5 (b) The legislative rules filed in the state register on
6 the sixteenth day of September, one thousand nine
7 hundred eighty-eight, modified by the board of examin-

8 ers of psychologists to meet the objections of the
9 legislative rule-making review committee and refiled in
10 the state register on the twenty-third day of November,
11 one thousand nine hundred eighty-eight, relating to the
12 board of examiners of psychologists (penalties and fees)
13 are authorized.

§64-2-48. Board of pharmacy.

1 The legislative rules filed in the state register on the
2 second day of October, one thousand nine hundred
3 eighty-four, modified by the board of pharmacy to meet
4 the objections of the legislative rule-making review
5 committee and refiled in the state register on the ninth
6 day of January, one thousand nine hundred eighty-five,
7 relating to the board of pharmacy (parenteral/enteral
8 compounding) are authorized.

§64-2-49. State athletic commission.

1 The legislative rules filed in the state register on the
2 twentieth day of February, one thousand nine hundred
3 eighty-five, relating to the state athletic commission
4 (professional and amateur boxing) are authorized.

§64-2-50. Archives and history commission.

1 (a) The legislative rules filed in the state register on
2 the fourteenth day of September, one thousand nine
3 hundred eighty-four, relating to the archives and history
4 commission (certified local government program) are
5 authorized with the following amendments:

6 §4.02, subsections a,b,c,d,e,g and i are amended in
7 their entirety to read as follows:

8 “a. The local government shall have created a historic
9 landmark commission or commission, consisting of five
10 (5) members, to carry out the provisions of the ordinance
11 or order.”

12 “b. HLC or commission membership shall be drawn
13 from among persons with demonstrated interest,
14 competence, or knowledge in historic preservation and
15 local history. To the extent available in the community,
16 members of the HLC shall be preservation-related
17 professionals (including the professions of history,

18 architecture, architectural history, planning, real estate,
19 American studies, geography, landscape architecture,
20 law, engineering, or archaeology). When a discipline is
21 not represented in the Commission membership, com-
22 missioners shall seek expertise in this area when
23 reporting on National Register nominations and other
24 actions that will impact properties which are normally
25 evaluated by a professional in such discipline. This may
26 be accomplished through consultation with universities
27 or colleges. Prior to the consultation process, the
28 Commission must notify the State Historic Preservation
29 Officer in writing that the appropriate professional
30 assistance has been obtained and identified."

31 "c. The local government, be certified without the
32 minimum number or types of professional disciplines,
33 must report to the SHPO's satisfaction that it has made
34 a reasonable effort to fill those positions. The require-
35 ments for professional representation on the Commission
36 shall not exceed those of the State Review Board."

37 "d. Commission meetings shall be held at regular
38 intervals at least four times each year, advertised in
39 advance, and open to the public. The Commission shall
40 establish rules of procedure or bylaws including a code
41 of conduct."

42 "e. The Commission shall transmit an annual report
43 of its activities to the State Historic Preservation
44 Officer. Such reports shall include, at a minimum, new
45 designations made, progress on survey activities, and
46 attendance records. Reports shall be submitted within
47 sixty days after the end of the fiscal year for the local
48 government or portion of the fiscal year in the first year
49 of the establishment of the commission. These reports
50 will be reviewed and evaluated by the SHPO to ensure
51 that the Commission's activities are consistent with the
52 State Historic Preservation Plan."

53 "g. Records of proceedings shall be transmitted to the
54 State Historic Preservation Officer at the same time
55 they are transmitted to members of the Commission."

56 "i. Commission responsibilities must be complemen-
57 tary to and carried out in coordination with those of the

58 State Historic Preservation Office as outlined in 36 CFR
59 61.4(b). The State Historic Preservation Office shall
60 cooperate with the HLC or Commission by making
61 available materials and training to provide a working
62 knowledge of the roles and operations of federal, state
63 and local preservation programs.”

64 §5.01, subsections a and d are amended to read in
65 their entirety as follows:

66 “a. A written assurance by the chief elected official
67 that the local government does fulfill all the standards
68 for certification outlined above.”

69 “d. Resumes of each of the members of the historic
70 landmark commission including credentials of member
71 expertise in fields related to historic preservation.
72 Where no professional members have been appointed an
73 explanation and information demonstrating good faith
74 efforts to obtain such members shall be included.”

75 §5.03 is amended in its entirety to read as follows:

76 “5.03 — **Determination that Local Government**
77 **Fulfills Requirements for Certification**—if the State
78 Historic Preservation Officer determines that the local
79 government fulfills the requirements for certification,
80 the State Historic Preservation Officer will prepare a
81 written certification agreement with the local govern-
82 ment that lists the specific responsibilities of the local
83 government where certified. These responsibilities will
84 include those powers and duties as stated in 4.02. The
85 SHPO will notify the United States Secretary of the
86 Interior, or designee and furnish a copy of the approved
87 request and the certification agreement and shall
88 respond to the local government within fifteen days of
89 the Secretary’s response.”

90 The fourth line of §5.04 is amended to read as follows:
91 “Secretary of the Interior within 15 working days. The
92 certification”

93 The last line of §6 is amended to read as follows:
94 “(National Historic Preservation Act, Section 101(c)(2)”

95 The section heading to §6.01 is amended in its entirety

96 to read as follows: "6.01 Notification of Commission by
97 SHPO of National Register Nomination of Property
98 Within Local Government Jurisdiction—"

99 The last three lines of §6.01 are amended in their
100 entirety to read as follows: "101(a) of the National
101 Historic Preservation Act, as amended. The State may
102 expedite such process with the concurrence of the
103 certified local government."

104 The first line after the section heading of §6.02 is
105 amended to read as follows: "(National Historic Preser-
106 vation Act, Sec. 101(c)(2)(b). If" and the third sentence
107 of said §6.02 is amended in its entirety to read as follows:
108 "If such an appeal is filed, the State shall follow the
109 procedures for making a nomination pursuant to
110 established procedures (section 101(a) of the Act)."

111 The second sentence of §6.03 is amended in its entirety
112 to read as follows: "If an HLC or commission does not
113 have a professional member with the necessary federal
114 qualifications in the area, the HLC can obtain the
115 opinion of a qualified professional in the area and
116 consider their opinion in their recommendation."

117 §6.04 is amended in its entirety to read as follows:

118 "6.04—Commission Qualifications for Federal Pass
119 Through Funds—Federal regulations also require that
120 commissions possess certain qualifications in order to
121 receive federal pass through funds. These are explained
122 in Section 4.02."

123 §7.01 is amended in its entirety to read as follows:

124 "7.01—Performance Review of Certified Local
125 Government by SHPO—The SHPO will review the
126 commission's annual report to ensure that the perfor-
127 mance of the local government is consistent with the
128 State Historic Preservation Plan. If the SHPO deter-
129 mines that the performance of a certified local govern-
130 ment is not in conformance with the certification
131 agreement and the State Historic Preservation Plan the
132 State Historic Preservation Officer shall document that
133 determination and recommend to the certified local
134 government steps which may be taken to improve their

135 performance. The Historic Preservation Officer shall
136 also review the administration of funds allocated from
137 the Historic Preservation Fund and other documents as
138 necessary. The SHPO shall maintain written records for
139 all SHPO evaluation of CLG's so that they may be
140 available to the Secretary at any time."

141 The last sentence of §7.03 is amended in its entirety
142 to read as follows: "This closeout will follow procedures
143 specified in National Register Programs Guidelines."

144 The first sentence of §8.01 is amended in its entirety
145 to read as follows: "A minimum of 10% of the state's
146 annual apportionment from the Historic Preservation
147 Fund of the Department of the Interior will be set aside
148 for transfer to qualified CLG's in accordance with the
149 National Historic Preservation Act as amended. In any
150 year in which the total Historic Preservation Fund
151 appropriation exceeds sixty-five (65) million dollars,
152 one-half (1/2) of the amount over sixty-five (65) million
153 dollars will also be transferred to CLG according to
154 procedures to be provided by the Secretary."

155 The third line of the first sentence of §8.04 is amended
156 in its entirety to read as follows: "consistent with
157 35(FR61.7(f)(1) which states that the amount awarded
158 to."

159 §8.05 is amended in its entirety to read as follows:

160 "8.05—**Application and Selection Criteria**—Project
161 application forms and selection criteria will be made
162 available through individual notification and public
163 advertisement from the SHPO of the West Virginia
164 Department of Culture and History in June of each year.
165 The criteria will be coordinated with those used to select
166 survey and planning grants during the fiscal year.
167 Funds must be applied for by August 30 of each year.
168 Funding in any prior year does not guarantee continued
169 funding. The project schedule and deadlines may vary
170 from year to year and is dependent upon the time frame
171 in which the Secretary of the Interior notifies the state
172 of its apportionment from the annual Historic Preser-
173 vation Fund."

174 The third sentence of §8.06 is amended in its entirety
175 to read as follows: "The SHPO is responsible for proper
176 accounting of Historic Preservation Fund grants to
177 CLG's in accordance with Office Management and
178 Budget Circular A-102, Attachment P Audit Require-
179 ment."

180 (b) The legislative rules filed in the state register on
181 the nineteenth day of September, one thousand nine
182 hundred eighty-eight, modified by the director of the
183 division of archives and history of the department of
184 culture and history to meet the objections of the
185 legislative rule-making review committee and refiled in
186 the state register on the fourteenth day of December,
187 one thousand nine hundred eighty-eight, relating to the
188 director of the division of archives and history of the
189 department of culture and history (standards and
190 procedures for administering state historic preservation
191 programs) are authorized with the amendment set forth:

192 Section 3.2.b.A after the word "days" by inserting the
193 words "after receipt of actual notice."

§64-2-51. Water development authority.

1 (a) The legislative rules filed in the state register on
2 the thirtieth day of August, one thousand nine hundred
3 eighty-four, relating to the water development authority
4 (hardship grant funds), are authorized.

5 (b) The legislative rules filed in the state register on
6 the fourteenth day of August, one thousand nine
7 hundred eighty-six, relating to the water development
8 authority (requirements governing disbursements of
9 loans and grants to governmental agencies for the
10 acquisition or construction of water development
11 projects), are authorized.

§64-2-52. Beef industry self-improvement assessment board.

1 The legislative rules filed in the state register on the
2 nineteenth day of April, one thousand nine hundred
3 eighty-five, relating to the beef industry self-improve-
4 ment assessment board (beef industry self-improvement
5 assessment program) are authorized.

§64-2-53. Commercial whitewater advisory board.

1 The legislative rules filed in the state register on the
2 twentieth day of December, one thousand nine hundred
3 eighty-six, modified by the commercial whitewater
4 advisory board to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the sixteenth day of January, one thousand
7 nine hundred eighty-seven, relating to the commercial
8 whitewater advisory board (commercial whitewater
9 outfitters), are authorized with the following
10 amendments:

11 "On page 1, §2.1, by striking all of §2.1 and inserting
12 in lieu thereof the following: '2.1 Commercial white-
13 water outfitter means any person, partnership, corpora-
14 tion or other organization, or any combination thereof,
15 duly authorized and operating from within or from
16 without the state, which for monetary profit or gain,
17 provides whitewater expeditions or rents whitewater
18 craft or equipment for use in whitewater expeditions on
19 any river, portions of rivers or waters of the state.'"

§64-2-54. Commissioner of the department of corrections.

1 (a) The legislative rules filed in the state register on
2 the twentieth day of September, one thousand nine
3 hundred eighty-eight, modified by the commissioner of
4 the department of corrections to meet the objections of
5 the legislative rule-making review committee and
6 refiled in the state register on the thirteenth day of
7 January, one thousand nine hundred eighty-nine,
8 relating to the commissioner of the department of
9 corrections (parole supervision) are authorized.

10 (b) The legislative rules filed in the state register on
11 the twentieth day of September, one thousand nine
12 hundred eighty-eight, modified by the commissioner of
13 the department of corrections to meet the objections of
14 the legislative rule-making review committee and
15 refiled in the state register on the thirteenth day of
16 January, one thousand nine hundred eighty-nine,
17 relating to the commissioner of the department of
18 corrections (furlough programs for inmates under the
19 custody and control of the commissioner of the depart-
20 ment of corrections) are authorized.

§64-2-55. Governor's committee on crime, delinquency and corrections.

1 The legislative rules filed in the state register on the
2 twenty-fifth day of July, one thousand nine hundred
3 eighty-eight, modified by the governor's committee on
4 crime, delinquency and corrections to meet the objec-
5 tions of the legislative rule-making review committee
6 and refiled in the state register on the twentieth day of
7 September, one thousand nine hundred eighty-eight,
8 relating to the governor's committee on crime, delin-
9 quency and corrections (basic training academy, annual
10 in-service and biennial in-service training standards)
11 are authorized.

§64-2-56. Structural barriers compliance board.

1 The legislative rules filed in the state register on the
2 twenty-fourth day of August, one thousand nine hundred
3 eighty-eight, modified by the structural barriers
4 compliance board to meet the objections of the legisla-
5 tive rule-making review committee and refiled in the
6 state register on the thirteenth day of January, one
7 thousand nine hundred eighty-nine, relating to the
8 structural barriers compliance board (elimination of
9 structural barriers in public buildings) are authorized.

§64-2-57. Department of finance and administration.

1 The legislative rules filed in the state register on the
2 eighteenth day of November, one thousand nine hundred
3 eighty-eight, modified by the director of the purchasing
4 division of the department of finance and administration
5 to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the
7 nineteenth day of January, one thousand nine hundred
8 eighty-nine, relating to the director of the purchasing
9 division of the department of finance and administration
10 (purchasing division) are authorized.

§64-2-58. Enterprise zone authority.

1 The legislative rules filed in the state register on the
2 twenty-sixth day of October, one thousand nine hundred
3 eighty-eight, modified by the enterprise zone authority
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the

6 twenty-third day of February, one thousand nine
7 hundred eighty-nine, relating to the enterprise zone
8 authority (creation of enterprise zone authority to
9 designate certain enterprise zones and provide for tax
10 benefits within those zones) are authorized.

§64-2-59. Board of barbers and beauticians.

1 (a) The legislative rules filed in the state register on
2 the tenth day of June, one thousand nine hundred
3 eighty-eight, modified by the board of barbers and
4 beauticians to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the eighth day of December, one thousand
7 nine hundred eighty-eight, relating to the board of
8 barbers and beauticians (minimum curriculum for
9 schools of barbering) are authorized with the amend-
10 ment set forth below:

11 On page 9, by inserting a new section, designated
12 section 3-6-14, to read as follows:

13 "§3-6-14. **Repeal of rule**—This rule will automati-
14 cally be repealed on July 1, 1991, unless extended prior
15 to that date by an act of the Legislature."

16 (b) The legislative rules filed in the state register on
17 the tenth day of June, one thousand nine hundred
18 eighty-eight, modified by the board of barbers and
19 beauticians to meet the objections of the legislative rule-
20 making review committee and refiled in the state
21 register on the eighth day of December, one thousand
22 nine hundred eighty-eight, relating to the board of
23 barbers and beauticians (qualifications, training,
24 examination and registration of instructors in barbering
25 and beauty culture) are authorized with the amendment
26 set forth below:

27 On page 6, by inserting a new section, designated
28 section 3-2-9, to read as follows:

29 "§3-2-9. **Repeal of rule**—This rule will automati-
30 cally be repealed on July 1, 1991, unless extended prior
31 to that date by an act of the Legislature."

32 (c) The legislative rules filed in the state register on
33 the tenth day of June, one thousand nine hundred
34 eighty-eight, modified by the board of barbers and

35 beauticians to meet the objections of the legislative rule-
36 making review committee and refiled in the state
37 register on the eighth day of December, one thousand
38 nine hundred eighty-eight, relating to the board of
39 barbers and beauticians (operation of barber shops and
40 schools of barbering) are authorized with the amend-
41 ment set forth below:

42 On page 5, by inserting a new section, designated
43 section 3-3-6, to read as follows:

44 **"§3-3-6. Repeal of rule—**This rule will automati-
45 cally be repealed on July 1, 1991, unless extended prior
46 to that date by an act of the Legislature."

47 (d) The legislative rules filed in the state register on
48 the tenth day of June, one thousand nine hundred
49 eighty-eight, modified by the board of barbers and
50 beauticians to meet the objections of the legislative rule-
51 making review committee and refiled in the state
52 register on the eighth day of December, one thousand
53 nine hundred eighty-eight, relating to the board of
54 barbers and beauticians (curriculum and minimum
55 requirements, subjects and hour schedule, rules and
56 regulations for schools of beauty culture operation in
57 West Virginia: joint barbers and beauticians license) are
58 authorized with the amendments set forth below:

59 On page 7, by inserting a new section, designated
60 section 3-1-11, to read as follows:

61 **"§3-1-11. Repeal of rule—**This rule will automati-
62 cally be repealed on July 1, 1991, unless extended prior
63 to that date by an act of the Legislature."

64 (e) The legislative rules filed in the state register on
65 the tenth day of June, one thousand nine hundred
66 eighty-eight, modified by the board of barbers and
67 beauticians to meet the objections of the legislative rule-
68 making review committee and refiled in the state
69 register on the eighth day of December, one thousand
70 nine hundred eighty-eight, relating to the board of
71 barbers and beauticians (operation of beauty shops and
72 schools of beauty culture) are authorized with the
73 amendments set forth below:

74 On page 4, by inserting a new section, designated
75 section 3-4-6, to read as follows:

76 “§3-4-6. **Repeal of rule**—This rule will automati-
77 cally be repealed on July 1, 1991, unless extended prior
78 to that date by an act of the Legislature.”

79 And,

80 On page 4, by inserting a new subsection, designated
81 section 3.25, to read as follows:

82 “3.25 Notwithstanding any law to the contrary or
83 interpretation of law to the contrary, any licensed
84 beautician may trim beards or mustaches.”

85 (f) The legislative rules filed in the state register on
86 the tenth day of June, one thousand nine hundred
87 eighty-eight, modified by the board of barbers and
88 beauticians to meet the objections of the legislative rule-
89 making review committee and refiled in the state
90 register on the eighth day of December, one thousand
91 nine hundred eighty-eight, relating to the board of
92 barbers and beauticians (licensing schools of barbering
93 or beauty culture) are authorized with the amendments
94 set forth below:

95 On page 2, subsection 4.1, by deleting subdivision (b)
96 and relettering the remaining subdivisions.

97 On page 6, by inserting a new section, designated
98 section 3-5-8, to read as follows:

99 “§3-5-8. **Repeal of rule**—This rule will automati-
100 cally be repealed on July 1, 1991, unless extended prior
101 to that date by an act of the Legislature.”

CHAPTER 111

(Com. Sub. for S. B. 341—By Senator Loehr)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two,
chapter sixty-four of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to authorizing the commissioner of the department of energy to promulgate legislative rules relating to West Virginia surface mining reclamation regulations (repealer).

Be it enacted by the Legislature of West Virginia:

That section eight, article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-8. Department of energy.

1 (a) The legislative rules filed in the state register on
2 the thirty-first day of March, one thousand nine hundred
3 eighty-two, relating to the department of mines (energy)
4 (mine safety program), are authorized.

5 (b) The legislative rules filed in the state register on
6 the seventeenth day of August, one thousand nine
7 hundred eighty-three, relating to the department of
8 energy (governing the safety of those employed in and
9 around surface mines), are authorized.

10 (c) The legislative rules filed in the state register on
11 the seventh day of December, one thousand nine
12 hundred eighty-three, relating to the office of oil and
13 gas, department of mines (energy), (oil and gas and
14 other wells) are authorized with the amendment set
15 forth below:

16 Page viii, place an * in front of section 32.02.

17 Page ix, after section 35.04 add the following:

18 “*35.05 Extra Powers of the Administrator 64.”

19 Page 1, section 1.03 in the list of additional regula-
20 tions, add 35.05; in the list of revised regulations, add
21 32.02, 32.03 and 33.00.

22 Page 52 section 32.04 and section 32.05 add at the end
23 of (ii) the words “and (iii) definition of proration unit”.

24 Page 53 section 33 after the word "definitions" add the
25 following sentence: "The following definitions are
26 applicable to these regulations used for purposes of
27 implementing the Natural Gas Policy Act of 1978 and
28 are not intended to be used in any other context."

29 Page 55, section 33.02 (b)(16) after the word "forma-
30 tions" in the third lines of (i) and (ii), add the words "for
31 which a well has been."

32 Page 64, after section 35.04 add the following section:
33 35.05 Extra powers of the Administrator.

34 "The administrator may also certify or provide a
35 waiver for a well located within a proration unit as
36 defined in 32.02 (b)(16) or any other well sought to be
37 certified under these regulations after notice and
38 hearing."

39 (d) The legislative rules filed in the state register on
40 the eleventh day of August, one thousand nine hundred
41 eighty-six, modified by the director of the division of oil
42 and gas of the department of energy to meet the
43 objections of the legislative rule-making review commit-
44 tee and refiled in the state register on the fifteenth day
45 of December, one thousand nine hundred eighty-six,
46 relating to the director of the division of oil and gas of
47 the department of energy (oil and gas wells and other
48 wells), are authorized.

49 (e) The legislative rules filed in the state register on
50 the eleventh day of August, one thousand nine hundred
51 eighty-six, modified by the director of the oil and gas
52 division of the department of energy to meet the
53 objections of the legislative rule-making review commit-
54 tee and refiled in the state register on the fifteenth day
55 of December, one thousand nine hundred eighty-six,
56 relating to the director of the division of oil and gas of
57 the department of energy (certification of gas wells), are
58 authorized.

59 (f) The legislative rules filed in the state register on
60 the eleventh day of August, one thousand nine hundred
61 eighty-six, modified by the director of the division of oil

62 and gas of the department of energy to meet the
63 objections of the legislative rule-making review commit-
64 tee and refiled in the state register on the fifteenth day
65 of December, one thousand nine hundred eighty-six,
66 relating to the director of the division of oil and gas of
67 the department of energy (underground injection
68 control), are authorized.

69 (g) The legislative rules filed in the state register on
70 the eleventh day of August, one thousand nine hundred
71 eighty-six, modified by the director of the division of oil
72 and gas of the department of energy to meet the
73 objections of the legislative rule-making review commit-
74 tee and refiled in the state register on the fifteenth day
75 of December, one thousand nine hundred eighty-six,
76 relating to the director of the division of oil and gas of
77 the department of energy (state national pollutant
78 discharge elimination system (NPDES) program), are
79 authorized.

80 (h) The legislative rules filed in the state register on
81 the fourteenth day of November, one thousand nine
82 hundred eighty-six, modified by the commissioner of the
83 department of energy to meet the objections of the
84 legislative rule-making review committee and refiled in
85 the state register on the sixteenth day of December, one
86 thousand nine hundred eighty-six, relating to the
87 commissioner of the department of energy (standards
88 for certification of coal mine electricians), are autho-
89 rized with the following amendments:

90 "Page one, §2.1, subsection (a), following the second
91 word, 'electrician' by striking the colon and inserting the
92 following: 'under the supervision required by section
93 4.1(d) of these rules' and a colon.

94 Page one, §2.1, subsection (a), by deleting all of
95 subdivision (6) and renumbering the subsequent
96 subdivisions.

97 Page two, §2.1, subsection (a), by deleting all of
98 subdivision (9).

99 Page two, §2.1, subsection (b), by deleting all of

100 subdivision (14) and inserting in lieu thereof a new
101 subdivision (14) to read as follows: '(14) Replace blown
102 fuses on trolley poles and nips.'

103 Page five, §4.1, subsection (d), line three, following the
104 words 'certified electrician prior' by inserting the words
105 'to any work being performed and again prior'."

106 (i) The legislative rules filed in the state register on
107 the fifteenth day of December, one thousand nine
108 hundred eighty-six, modified by the commissioner of the
109 department of energy to meet the objections of the
110 legislative rule-making review committee and refiled in
111 the state register on the twenty-first day of January, one
112 thousand nine hundred eighty-seven, relating to the
113 commissioner of the department of energy (safety
114 training program for prospective underground coal
115 miners in West Virginia), are authorized.

116 (j) The legislative rules filed in the state register on
117 the eleventh day of August, one thousand nine hundred
118 eighty-six, modified by the commissioner of the depart-
119 ment of energy to meet the objections of the legislative
120 rule-making review committee and refiled in the state
121 register on the fifteenth day of December, one thousand
122 nine hundred eighty-six, relating to the commissioner of
123 the department of energy (miscellaneous water pollution
124 control), are authorized.

125 (k) The legislative rules filed in the state register on
126 the eleventh day of August, one thousand nine hundred
127 eighty-six, modified by the commissioner of the depart-
128 ment of energy to meet the objections of the legislative
129 rule-making review committee and refiled in the state
130 register on the fifteenth day of December, one thousand
131 nine hundred eighty-six, relating to the commissioner of
132 the department of energy (dam control), are authorized.

133 (l) The legislative rules filed in the state register on
134 the eleventh day of August, one thousand nine hundred
135 eighty-six, modified by the commissioner of the depart-
136 ment of energy to meet the objections of the legislative
137 rule-making review committee and refiled in the state
138 register on the fifteenth day of December, one thousand

139 nine hundred eighty-six, relating to the commissioner of
140 the department of energy (solid waste management), are
141 authorized.

142 (m) The legislative rules filed in the state register on
143 the eleventh day of August, one thousand nine hundred
144 eighty-six, modified by the commissioner of the depart-
145 ment of energy to meet the objections of the legislative
146 rule-making review committee and refiled in the state
147 register on the fifteenth day of December, one thousand
148 nine hundred eighty-six, relating to the commissioner of
149 the department of energy (hazardous waste manage-
150 ment), are authorized.

151 (n) The legislative rules filed in the state register on
152 the twentieth day of April, one thousand nine hundred
153 eighty-seven, relating to the commissioner of the
154 department of energy (roof control) are authorized.

155 (o) The legislative rules filed in the state register on
156 the third day of April, one thousand nine hundred
157 eighty-seven, relating to the department of energy
158 (standards for certification of underground belt examin-
159 ers for underground coal mines), are authorized.

160 (p) The legislative rules filed in the state register on
161 the ninth day of April, one thousand nine hundred
162 eighty-seven, relating to the commissioner of the
163 department of energy (performance standards for
164 blasting on surface mines) are authorized.

165 (q) The legislative rules filed in the state register on
166 the twelfth day of January, one thousand nine hundred
167 eighty-seven, modified by the commissioner of the
168 department of energy to meet the objections of the
169 legislative rule-making review committee and refiled in
170 the state register on the twentieth day of February, one
171 thousand nine hundred eighty-seven, relating to the
172 commissioner of the department of energy (state
173 national pollutant discharge elimination system
174 (NPDES) for mines and minerals), are authorized.

175 (r) The Legislature hereby authorizes and directs the
176 department of energy to promulgate the procedural

177 rules filed in the state register on the twenty-first day
178 of October, one thousand nine hundred eighty-seven,
179 relating to the department of energy (requests for
180 information) with the amendments set forth below:

181 On page two, subsection 3.1, by striking subdivision
182 (d) and renumbering the remaining subdivisions, and

183 On page three, section 6, by striking all of subsection
184 6.1 and inserting in lieu thereof, the following:

185 "6.1 The department shall establish fixed rate fees for
186 reproduction of documents, records, and files on the
187 basis of the actual cost of such reproduction and shall
188 document such costs: *Provided*, That where total costs
189 are less than five dollars, no fee shall be charged."

190 (s) The legislative rules filed in the state register on
191 the twelfth day of May, one thousand nine hundred
192 eighty-seven, modified by the commissioner of the
193 department of energy to meet the objections of the
194 legislative rule-making review committee and refiled in
195 the state register on the fourteenth day of August, one
196 thousand nine hundred eighty-seven, relating to the
197 commissioner of the department of energy (blasters
198 certification for surface coal mines and surface areas of
199 coal mines) are authorized.

200 (t) The legislative rules filed in the state register on
201 the twentieth day of January, one thousand nine
202 hundred eighty-eight, modified by the commissioner of
203 the department of energy to meet the objections of the
204 legislative rule-making review committee and refiled in
205 the state register on the twenty-eighth day of November,
206 one thousand nine hundred eighty-eight, relating to the
207 commissioner of the department of energy (abandoned
208 mine reclamation) are authorized.

209 (u) The legislative rules filed in the state register on
210 the nineteenth day of September, one thousand nine
211 hundred eighty-eight, and modified to meet the objec-
212 tions of the West Virginia Legislature and refiled in the

213 state register on the sixth day of April, one thousand
214 nine hundred eighty-nine, relating to the commissioner
215 of the department of energy (West Virginia surface
216 mining reclamation regulations (repealer)) are autho-
217 rized.

CHAPTER 112

(S. B. 236—By Senator Tucker, Mr. President)

[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reimbursement to the clerks of either legislative house of actual costs for copying or recording.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS.

§4-1-15. Fees of clerks for copying or recording.

1 For any copying or recording (other than that
2 mentioned in section twelve of this article and such as
3 he is required to do for the Legislature, or either house,
4 or a committee thereof, in the discharge of his official
5 duty) the clerk of either house may demand and receive
6 of and from the person, at whose request it is done, a
7 fee reasonably calculated to reimburse the clerk for the
8 cost of such copying or recording.

CHAPTER 113

(H. B. 2860—By Delegate Sattes)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article five of said chapter; to amend and reenact section four, article nine of said chapter; to amend and reenact section seven, article ten of said chapter; to amend and reenact section three, article one, chapter five-a of said code; to amend and reenact section four, article twenty-nine-c, chapter sixteen of said code; to amend and reenact section ten, article three, chapter twenty-nine-a of said code; to amend and reenact section eleven, article three-a of said chapter twenty-nine-a; to amend and reenact section three, article five-c, chapter forty-nine of said code, all relating to revising membership of several statutory legislative committees and method by which membership is to be determined; membership of the commission on special investigations; prorotation of membership of the legislative commission on pensions and retirement; membership of the joint committee on government operations; membership of the council of finance and administration; composition of the legislative task force on uncompensated health care and medicaid expenditure; meeting dates, approval of joint committee on government and finance; reports to joint committee on government and finance and Legislature; compensation of members; membership of the legislative rule-making review committee; membership of the legislative oversight commission on education accountability; termination; composition of the legislative commission on juvenile law; terms of members.

Be it enacted by the Legislature of West Virginia:

That section one, article three; section one, article five; section four, article nine; and section seven, article ten, all of chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted;

that section three, article one, chapter five-a of said code be amended and reenacted; that section four, article twenty-nine-c, chapter sixteen of said code be amended and reenacted; that section ten, article three, chapter twenty-nine-a of said code be amended and reenacted; that section eleven, article three-a of said chapter twenty-nine-a be amended and reenacted; and that section three, article five-c, chapter forty-nine of said code be amended and reenacted, all to read as follows:

Chapter

- 4. The Legislature.**
- 5A. Department of Finance and Administration.**
- 16. Public Health.**
- 29A. State Administrative Procedures.**
- 49. Child Welfare.**

CHAPTER 4. THE LEGISLATURE.

Article

- 3. Joint Committee on Government and Finance.**
- 5. Commission on Special Investigations.**
- 9. Legislative Commission on Pensions and Retirement.**
- 10. West Virginia Sunset Law.**

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

§4-3-1. Continued as statutory body; composition; appointment and terms of members.

1 The joint committee on government and finance,
2 heretofore existing under a joint rule of the Senate and
3 House of Delegates, is hereby continued as a statutory
4 body. This committee shall be composed of seven
5 members of the Senate, six of whom shall be appointed
6 by the president of the Senate, and seven members of
7 the House of Delegates, six of whom shall be appointed
8 by the speaker of the House of Delegates. The six
9 members appointed by the president of the Senate shall
10 include the majority leader of the Senate, the minority
11 leader of the Senate, the chairman of the Senate
12 committee on the judiciary and the chairman of the
13 Senate committee on finance. The six members ap-
14 pointed by the speaker of the House of Delegates shall
15 include the majority leader of the House of Delegates,
16 the minority leader of the House of Delegates, the
17 chairman of the house committee on the judiciary and
18 the chairman of the house committee on finance. The
19 president of the Senate and the speaker of the House of

20 Delegates shall be members of the committee and
21 cochairmen thereof. Not more than five members of the
22 committee from each house shall be members of the
23 same political party: *Provided*, That in the event the
24 membership of a political party is less than fifteen
25 percent in the House of Delegates or Senate, then the
26 membership of that political party from the legislative
27 house with less than fifteen percent membership may be
28 one from that house. The members shall serve until their
29 successors shall have been appointed as heretofore
30 provided.

ARTICLE 5. COMMISSION ON SPECIAL INVESTIGATIONS.

§4-5-1. Commission continued as "commission on special investigations"; composition; appointment and terms of members.

1 The purchasing practices and procedures commission,
2 heretofore created, shall continue in existence but on
3 and after the effective date of this section shall be
4 named and designated the "commission on special
5 investigations." The commission shall continue to be
6 composed of five members of the Senate, to be appointed
7 by the president thereof, no more than three of whom
8 shall be from the same political party; and five members
9 of the House of Delegates, to be appointed by the
10 speaker thereof, no more than three of whom shall be
11 appointed from the same political party: *Provided*, That
12 in the event the membership of a political party is less
13 than fifteen percent in the House of Delegates or Senate,
14 then the membership of that political party from the
15 legislative house with less than fifteen percent member-
16 ship may be one from that house. The commission shall
17 be headed by two cochairmen, one to be selected by and
18 from the members appointed from the Senate, and one
19 to be selected by and from the members appointed from
20 the House of Delegates. All members of the commission
21 shall serve until their successors shall have been
22 appointed as heretofore provided.

ARTICLE 9. LEGISLATIVE COMMISSION ON PENSIONS AND RETIREMENT.

§4-9-4. Appointment of members; terms.

1 The commission shall consist of three members of the
2 Senate to be appointed by the president of the Senate
3 and three members of the House of Delegates to be
4 appointed by the speaker of the House, and the governor
5 shall appoint three members, one from labor, one from
6 the business community and one from the general
7 public. No more than two of the three members
8 appointed by the president of the Senate and the speaker
9 of the House, respectively, may be members of the same
10 political party. The first appointed members of the
11 commission shall serve for a term expiring on the
12 thirtieth day of June in the year of the next succeeding
13 regular session of the Legislature. At the commence-
14 ment of such next succeeding regular session and at the
15 commencement of regular sessions every two years
16 thereafter, members of the commission shall be ap-
17 pointed for two-year terms beginning the first day of
18 July in the year of each such regular session. Vacancies
19 on the commission shall be filled for unexpired terms
20 in the same manner as appointments to the commission.

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

**§4-10-7. Joint committee on government operations
created; membership; compensation and ex-
penses; meetings.**

1 There is hereby created a statutory body to be known
2 as the joint committee on government operations. Said
3 committee shall be composed of five members of the
4 Senate, to be appointed by the president thereof, no
5 more than three of whom shall be appointed from the
6 same political party; five members of the House of
7 Delegates, to be appointed by the speaker thereof, no
8 more than three of whom shall be appointed from the
9 same political party: *Provided*, That in the event the
10 membership of a political party is less than fifteen
11 percent in the House of Delegates or Senate, that the
12 membership of that political party from the legislative
13 house with less than fifteen percent membership may be
14 one from that house; and five citizens of this state who
15 are not legislators, public officials or public employees,
16 to be appointed by the governor to serve at his will and
17 pleasure, not more than three of whom shall be

18 appointed from the same political party, and at least one
19 of whom shall reside in each congressional district of
20 this state. All citizen members shall sign a conflict of
21 interest statement. The committee shall be headed by
22 two cochairmen, one to be selected by the president of
23 the Senate from the members appointed from the
24 Senate, and one to be selected by the speaker of the
25 House of Delegates from the members appointed from
26 the House of Delegates. All members of the committee
27 shall serve until their successors shall have been
28 appointed as heretofore provided. Members of the
29 committee shall receive such compensation and reim-
30 bursement for expenses in connection with performance
31 of interim duties between regular sessions of the
32 Legislature as may be authorized by the citizens
33 legislative compensation commission established by
34 section thirty-three, article six of the constitution of
35 West Virginia. Each citizen member of the committee
36 shall receive thirty-five dollars per diem for each day
37 or substantial portion thereof that he is engaged in the
38 work of the committee, in addition to reimbursement for
39 his necessary expenses incurred in the performance of
40 his duties under this article, such reimbursement to be
41 subject to the same limitations as govern the expenses
42 of the legislative members of the committee.
43 Compensation and expenses shall be paid from an
44 appropriation to be made expressly for the committee,
45 but if no such appropriation be made or the total amount
46 appropriated has been expended, such expenses shall be
47 paid from the appropriation under "Account No. 103 for
48 Joint Expenses," but no expense of any kind whatever
49 payable under said Account No. 103 for joint expenses
50 shall be incurred unless first approved by the joint
51 committee on government and finance. The committee
52 shall meet upon call of the cochairmen or either of them
53 and may meet at any time, both during sessions of the
54 Legislature and in the interim.

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF FINANCE AND AD- MINISTRATION.

***§5A-1-3. Council of finance and administration.**

1 The council of finance and administration is hereby
2 created and shall be composed of ten members, four of
3 whom shall serve ex officio and six of whom shall be
4 appointed as herein provided. The ex officio members
5 shall be the commissioner of the department of finance
6 and administration, the attorney general or his designee,
7 the state treasurer or his designee and the state auditor
8 or his designee; such designees being authorized voting
9 ones. From the membership of the Legislature, the
10 president of the Senate shall appoint three senators as
11 members of the council, not more than two of whom
12 shall be members of the same political party, and the
13 speaker of the House shall appoint three delegates as
14 members of the council, not more than two of whom
15 shall be members of the same political party. Members
16 of the council appointed by the president of the Senate
17 and the speaker of the House shall serve at the will and
18 pleasure of the officer making their appointment. The
19 commissioner of finance and administration shall serve
20 as chairman of the council. Meetings of the council shall
21 be upon call of the chairman or a majority of the
22 members thereof. It shall be the duty of the chairman
23 to call no less than four meetings in each fiscal year, one
24 in each quarter, or more often as necessary, and all
25 meetings shall be open to the public. All meetings of the
26 council shall be held at the capitol building in a suitable
27 committee room which shall be made available by the
28 Legislature for such purpose: *Provided*, That the second
29 quarterly meeting in each fiscal year shall be held in
30 November and shall be a joint meeting with the joint
31 committee on government and finance of the Legislature
32 called jointly by the president of the Senate, speaker of
33 the House and commissioner of finance and
34 administration.

35 The council shall serve the department of finance and
36 administration in an advisory capacity for purposes of
37 reviewing the performance of the administrative and
38 fiscal procedures of the state, including the oversight of

* Clerk's Note: This section was also amended by H. B. 2037, which passed prior to this act.

39 all federal funds, and shall have the following duties:

40 (1) To advise with the commissioner in respect to
41 matters of budgetary intent and efficiency, including
42 budget bill and budget document detail and format;

43 (2) To advise with the commissioner concerning such
44 studies of government and administration concerning
45 fiscal policy as it may consider appropriate;

46 (3) To advise with the commissioner in the prepara-
47 tion of studies designed to provide long-term capital
48 planning and finance for state institutions and agencies;
49 and

50 (4) To advise with the commissioner in respect to the
51 application for, and receipt and expenditure of, antic-
52 ipated or unanticipated federal funds.

53 The appointed, non-ex officio members of the council
54 shall be entitled to receive such compensation and
55 reimbursement for expenses in connection with perfor-
56 mance of their duties, during interim periods, if not
57 otherwise receiving the same for such identical periods,
58 as is authorized by the applicable sections of article two-
59 a, chapter four of the code in respect to performance of
60 duties either within the state or, if deemed necessary,
61 out of state. Such compensation and expenses shall be
62 incurred and paid only after approval by the joint
63 committee on government and finance.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 29C. INDIGENT CARE.

§16-29C-4. Legislative study; appointment of members; expenses; reports; termination.

1 Not later than the first day of June, one thousand nine
2 hundred eighty-five, the president of the Senate and
3 speaker of the House of Delegates of the West Virginia
4 Legislature shall appoint a legislative task force on
5 uncompensated health care and medicaid expenditures
6 which shall meet, study and make recommendations as
7 herein provided.

8 The task force shall be composed of three members
9 of the Senate appointed by the president from the
10 membership of the Senate standing committee on health
11 and human resources, three members of the House of
12 Delegates appointed by the speaker from the member-
13 ship of the House of Delegates standing committee on
14 health and human resources, and a number of citizens
15 appointed jointly by the president and speaker which,
16 in their discretion, adequately provides for the approp-
17 riate representation of the interests of the providers of
18 health care services, the providers of health care
19 insurance, state departments involved in the administra-
20 tion of health care and health care related programs and
21 the citizens of this state. Of the members of the Senate
22 appointed by the president, not more than two shall be
23 from the same political party. Of the members of the
24 House of Delegates appointed by the speaker, not more
25 than two shall be from the same political party.

26 Members originally appointed to the task force shall
27 serve for terms beginning on the date of appointment
28 and ending on the thirtieth day of June, one thousand
29 nine hundred ninety, unless sooner replaced by the
30 president or the speaker as applicable, or, in the
31 discretion of the president and the speaker, unless the
32 work of the task force is completed or the need for the
33 task force no longer exists prior to that date. The task
34 force shall cease to exist on the thirtieth day of June,
35 one thousand nine hundred ninety.

36 The task force shall meet on such dates as may be
37 approved by the joint committee on government and
38 finance for the regular meetings of its subcommittees
39 unless approval is first obtained from the joint commit-
40 tee on government and finance for additional meetings.
41 The task force shall conduct studies on the amount of
42 funds expended by hospitals and other health care
43 providers of this state for services to persons who are
44 unable to pay for those services and for which they
45 receive no other form of reimbursement, the extent to
46 which persons in this state forego needed medical
47 services because of insufficient income and assets to pay

48 for those services, the extent to which the state is
49 maximizing available federal programs and moneys in
50 providing health care services to the citizens of this
51 state, the operation of the programs and funds created
52 by this article and the roles of the public, private and
53 private nonprofit sectors in providing health care
54 services to the citizens of this state. The task force shall
55 also study the state medicaid program in order to
56 determine if the state medicaid agency, as the payor of
57 last resort, is expending maximum effort to identify
58 alternate private insurance resources for medicaid
59 beneficiaries and shall study the feasibility and financial
60 impact upon the state of assuring increased access to
61 medicaid beneficiaries to primary health care in the
62 nonhospital setting by requiring enrollment in a
63 primary care clinic program, if available, and of the
64 establishment of different and lesser schedules of
65 payment for primary health services delivered by a
66 hospital emergency room as compared to the schedule
67 of payments for emergency room services of a true
68 medical emergency nature. The task force shall make
69 such recommendations as it deems appropriate to
70 address the needs identified in the studies.

71 The task force shall file an interim report with the
72 joint committee on government and finance and the
73 Legislature on the date of the last meeting of the joint
74 committee on government and finance prior to com-
75 mencement of the regular session of the Legislature in
76 each year before the final report of the task force is filed
77 with the joint committee on government and finance and
78 the Legislature on or before the thirtieth day of June,
79 one thousand nine hundred ninety.

80 The members of the task force shall be entitled to
81 compensation at the rate authorized for members of the
82 Legislature participating in legislative interim meetings
83 and to reimbursement for reasonable and necessary
84 expenses actually incurred in attending meetings of the
85 task force, except that any employee of the state
86 appointed to the task force is not entitled to such
87 compensation. Funds necessary for the work of the task
88 force shall be paid from joint appropriations to the

89 Senate and House of Delegates but no such funds shall
90 be spent or obligations incurred in the conduct of such
91 work without prior approval of the joint committee on
92 government and finance.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES.

Article

3. Rule Making.

3A. Education Rule Making.

ARTICLE 3. RULE MAKING.

§29A-3-10. Creation of a legislative rule-making review committee.

1 (a) There is hereby created a joint committee of the
2 Legislature, known as the legislative rule-making
3 review committee, to review all legislative rules of the
4 several agencies and such other rules as the committee
5 deems appropriate. The committee shall be composed of
6 six members of the Senate, appointed by the president
7 of the Senate, and six members of the House of
8 Delegates, appointed by the speaker of the House of
9 Delegates. In addition, the president of the Senate and
10 the speaker of the House of Delegates shall be ex officio
11 nonvoting members of the committee and shall design-
12 ate the cochairmen. Not more than four of the voting
13 members of the committee from each house shall be
14 members of the same political party: *Provided*, That in
15 the event the membership of a political party is less than
16 fifteen percent in the House of Delegates or Senate, then
17 the membership of that political party from the
18 legislative house with less than fifteen percent member-
19 ship may be one from that house. The members shall
20 serve until their successors shall have been appointed as
21 heretofore provided. Members of the committee shall
22 receive such compensation and expenses as provided in
23 article two-a, chapter four of this code. Such expenses
24 and all other expenses, including those incurred in the
25 employment of legal, technical, investigative, clerical,
26 stenographic, advisory and other personnel, shall be
27 paid from an appropriation to be made expressly for the
28 legislative rule-making review committee, but if no such

29 appropriation be made, such expenses shall be paid
30 from the appropriation under "Account No. 103 for Joint
31 Expenses," but no expense of any kind whatever payable
32 under said Account No. 103 for joint expenses shall be
33 incurred unless first approved by the joint committee on
34 government and finance. The committee shall meet at
35 any time, both during sessions of the Legislature and in
36 the interim.

37 (b) The committee may adopt such rules of procedure
38 as it considers necessary for the submission, presenta-
39 tion and consideration of rules.

ARTICLE 3A. EDUCATION RULE MAKING.

§29A-3A-11. Creation of a legislative oversight commis- sion on education accountability; termination.

1 (a) There is hereby created a joint commission of the
2 Legislature, known as the legislative oversight commis-
3 sion on education accountability, to review all legislative
4 rules of the board and such other rules as the commis-
5 sion deems appropriate. The commission shall be
6 composed of three members of the Senate, appointed by
7 the president of the Senate, and three members of the
8 House of Delegates, appointed by the speaker of the
9 House of Delegates. No more than two of the three
10 members appointed by the president of the Senate and
11 the speaker of the House, respectively, may be members
12 of the same political party. In addition, the president of
13 the Senate and the speaker of the House of Delegates
14 shall be ex officio nonvoting members of the commission
15 and shall designate the cochairmen. At least one of the
16 Senate members and one of the House members shall
17 be members of the committee on education of the Senate
18 and House, respectively, and at least one of the Senate
19 members and at least one of the House members shall
20 be a member of the committee on finance of the Senate
21 and House, respectively. The members shall serve until
22 their successors shall have been appointed as heretofore
23 provided. Members of the commission shall receive such
24 compensation and expenses as provided in article two-
25 a, chapter four of this code. Such expenses and all other

26 expenses, including those incurred in the employment of
27 legal, technical, investigative, clerical, stenographic,
28 advisory and other personnel shall be paid from an
29 appropriation to be made expressly for the legislative
30 oversight commission on education accountability, but if
31 no such appropriation be made, such expenses shall be
32 paid from the appropriation under "Account No. 103 for
33 Joint Expenses," but no expense of any kind whatever
34 payable under said Account No. 103 for joint expenses
35 shall be incurred unless first approved by the joint
36 committee on government and finance. The commission
37 shall meet at any time, both during sessions of the
38 Legislature and in the interim.

39 (b) The commission may adopt such rules of proce-
40 dure as it considers necessary for the submission,
41 presentation and consideration of rules.

42 (c) The legislative oversight commission on education
43 accountability shall be terminated on the first day of
44 July, one thousand nine hundred ninety-two, unless
45 review of its functions shall be undertaken pursuant to
46 the provisions of sections nine, ten and eleven, article
47 ten, chapter four of this code. If such commission is
48 terminated pursuant to this subsection, any report
49 required to be submitted to them shall instead be
50 submitted to the joint committee on education of the
51 Legislature.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5C. LEGISLATIVE COMMISSION ON JUVENILE LAW.

§49-5C-3. Appointment of members; terms.

1 The commission shall consist of:

2 (1) Three members of the Senate to be appointed by
3 the president of the Senate and three members of the
4 House of Delegates to be appointed by the speaker of the
5 House. No more than two of the three members
6 appointed by the president of the Senate and the speaker
7 of the House, respectively, shall be members of the same
8 political party.

9 (2) The commissioner of the department of human

10 services, the commissioner of corrections and the state
11 director of health who shall serve as ex officio members.

12 (3) Two persons trained and employed as school
13 guidance counselors, one to be appointed by the presi-
14 dent of the Senate and one to be appointed by the
15 speaker of the House.

16 The first appointed members of the commission shall
17 serve for a term expiring on the thirtieth day of June
18 in the year of the next succeeding regular session of the
19 Legislature. At the commencement of such next suc-
20 ceeding regular session and at the commencement of
21 regular sessions every two years thereafter, members of
22 the commission shall be appointed for two-year terms
23 beginning the first day of July in the year of each such
24 regular session. Vacancies on the commission shall be
25 filled for unexpired terms in the same manner as
26 appointments to the commission.

CHAPTER 114

(Com. Sub. for H. B. 2005—By Delegates Love and Roop)

[Passed March 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article ten, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter thirty-eight by adding thereto a new article, designated article ten-a, relating to the filing and recordation of federal tax liens and other federal liens generally; providing for an increase in the fees for the recordation by the county clerk of any notice of federal tax lien, refiled notice of federal tax lien, certificate of discharge or subordination, or other notices including a certificate of release, partial release or nonattachment of a federal tax lien, and providing a quarterly schedule for the payment of such fees by the Internal Revenue Service; providing for the filing of notices of liens, certificates, and other notices affecting federal liens for which the filing thereof is not otherwise provided; identifying the place of filing for federal liens upon real and personal property; providing for the certification of notices of liens, certificates, or other

notices affecting federal liens; prescribing the duties of the clerk of the county commission; and establishing fees for indexing and filing.

Be it enacted by the Legislature of West Virginia:

That section one, article ten, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter thirty-eight be further amended by adding thereto a new article, designated article ten-a, all to read as follows:

CHAPTER 38. LIENS.

Article

10. Federal Tax Liens; Orders and Decrees in Bankruptcy.

10A. Federal Lien Registration.

ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREES IN BANKRUPTCY.

§38-10-1. Recordation of federal tax lien; release; fee.

1 Notices of federal tax liens and certificates discharg-
2 ing such liens may be filed in the office of the clerk of
3 the county commission of one or more of the counties of
4 this state. The clerk of the county commission of every
5 county of this state shall keep in his or her office in a
6 bound book a federal tax lien docket, in which he or she
7 shall, upon the filing in the office of any notice of a lien
8 upon the property of any person in favor of the United
9 States for the amount of any tax, including any interest,
10 penalty, additional amount, or additions to such tax,
11 together with any costs that may accrue in addition
12 thereto, record such notice without delay. The clerk
13 shall index such notice in the name of the person against
14 whom the lien is claimed. No such tax shall be a valid
15 lien as against any mortgagee, purchaser or judgment
16 creditor, until such notice shall be filed in the office of
17 the clerk of the county commission of the county or
18 counties in which the property subject to such lien is
19 situated.

20 The clerk of such county commission shall, upon the
21 filing in his or her office of any release or partial release
22 of such lien issued by the Internal Revenue Service,
23 record the same and make proper marginal notation
24 thereof in the federal tax lien docket.

25 The fee for filing and indexing each notice of federal
26 tax lien, refiled notice of federal tax lien, certificate of
27 discharge or subordination, or other notice, including a
28 certificate of release, partial release or nonattachment
29 of a federal tax lien, shall be two dollars. If a release
30 contains more than one reference to a lien released, the
31 fee shall be two dollars for each lien released thereby.
32 Such fees may, at the discretion of the Internal Revenue
33 Service, be remitted quarterly on the thirty-first day of
34 March, the thirtieth day of June, the thirtieth day of
35 September and the thirty-first day of December and
36 shall include all fees due for the preceding three months
37 of the quarter for which the remittance is made.

ARTICLE 10A. FEDERAL LIEN REGISTRATION.

§38-10A-1. Scope.

§38-10A-2. Place of filing.

§38-10A-3. Execution of notices and certificates.

§38-10A-4. Duties of the clerk of the county commission.

§38-10A-5. Fees.

§38-10A-1. Scope.

1 This article applies only to federal lien notices which
2 under any Act of Congress or any regulation adopted
3 pursuant thereto are required or permitted to be filed
4 in the same manner as notices of federal tax liens.

§38-10A-2. Place of filing.

1 (a) Notices of liens, certificates, and other notices
2 affecting federal liens, for which filing thereof is not
3 otherwise provided for under the provisions of this code,
4 must be filed in accordance with this article.

5 (b) Notices of liens upon real property for obligations
6 payable to the United States and certificates and notices
7 affecting the liens shall be filed in the office of the clerk
8 of the county commission of the county in which the real
9 property subject to the liens is situated.

10 (c) Notices of federal liens upon personal property,
11 whether tangible or intangible, for obligations payable
12 to the United States and certificates and notices
13 affecting the liens shall be filed in the office of the clerk
14 of the county commission of the county wherein the
15 person against whose interest the lien applies resides at
16 the time of filing of the notice of lien. For purposes of

17 this subsection, the residence of a corporation or a
18 partnership shall be deemed to be the place at which
19 the principal executive office is located.

§38-10A-3. Execution of notices and certificates.

1 Certification of notices of liens, certificates, or other
2 notices affecting federal liens by the secretary of the
3 treasury of the United States or his or her delegate, or
4 by any official or entity of the United States responsible
5 for filing or certifying of notice of any other lien, entitles
6 them to be filed and no other attestation, certification,
7 or acknowledgement is necessary.

§38-10A-4. Duties of the clerk of the county commission.

1 (a) If a notice of federal lien, a refiling of a notice of
2 federal lien, or a notice of revocation of any certificate
3 described in subsection (b) is presented to the clerk of
4 the county commission, the clerk shall endorse thereon
5 his or her identification and the date and time of receipt,
6 file the same, and forthwith enter and record the fact
7 of such filing in the index maintained for the public
8 indexing of federal liens in such a manner that a
9 reasonable inspection of the index will reveal the
10 existence of the instrument.

11 (b) If a refiled notice of federal lien referred to in
12 subsection (a) or a certificate of release, nonattachment,
13 discharge, or subordination of any lien is presented to
14 the clerk of the county commission for filing, the clerk
15 shall endorse thereon his or her identification and the
16 date and time of receipt, file the same, enter and record
17 the fact of such filing in the index maintained for the
18 public indexing of federal liens, and enter and record
19 the fact of such filing in the public index on the line
20 where the original notice of lien is entered.

21 (c) Upon request of any person, the clerk of the county
22 commission shall issue his or her certificate showing
23 whether there is on file, on the date and hour stated
24 therein, any notice of lien or certificate or notice
25 affecting any lien filed under this article or previous
26 federal tax lien registration act, naming a particular
27 person, and if a notice or certificate is on file, giving the
28 date and hour of filing of each notice or certificate. The

29 fee for a certificate is \$2.00. Upon request, the clerk
30 shall furnish a copy of any notice of federal lien, or
31 notice or certificate affecting a federal lien, for a fee of
32 \$1.00 per page.

§38-10A-5. Fees.

1 The fee for filing and indexing each notice of lien or
2 certificate or notice affecting the lien is:

3 (1) For a lien on real estate, \$2.00;

4 (2) For a lien on tangible and intangible personal
5 property, \$2.00;

6 (3) For a certificate of discharge or subordination,
7 \$2.00; and

8 (4) For all other notices, including a certificate of
9 release or nonattachment, \$2.00.

10 The clerk of the county commission shall bill the
11 appropriate federal officials on a quarterly basis for fees
12 for documents filed by them.

CHAPTER 115

(H. B. 2673—By Delegates Wooton and Rutledge)

[Passed April 5, 1989; in effect June 1, 1989. Approved by the Governor.]

AN ACT to amend chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-d, relating to the filing and recordation of federal superfund liens.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article ten-d, to read as follows:

ARTICLE 10D. SUPERFUND LIEN RECORDATION ACT.**§38-10D-1. Recordation of federal superfund liens; release; fee.**

1 (a) Pursuant to the authority of section 107(d) of the
2 Comprehensive Environmental Response, Compensation
3 and Liability Act of 1980, as amended, 42 U.S.C.
4 §9607(1), notices of liens for costs and damages under
5 said act (superfund liens) may be filed in an office
6 designated by state law. Pursuant to said act, the office
7 of the clerk of the county commission for the county in
8 which the real property is located is hereby designated
9 as the appropriate office for the filing of such notices
10 of superfund liens.

11 (b) The clerk of the county commission of every
12 county of this state shall, upon the filing in his/her office
13 of any such notice of superfund lien upon the property
14 of any person in favor of the United States, record such
15 notice of lien without delay in the federal tax lien
16 docket. He shall index such lien in the name of the
17 person against whom the lien is claimed.

18 (c) Every such superfund lien shall be void as to any
19 creditor, secured parties under a deed of trust, mortga-
20 gee, purchaser, holder of a security interest or judgment
21 lien creditor, until and except from the time such lien
22 is filed in the office of the clerk of the county commission
23 of the county in which the real property subject to such
24 lien is situated. In case the real property lies in more
25 than one county, then such notice shall be filed in all
26 counties in which the real property subject to such lien
27 is situated.

28 (d) The clerk of such county commission shall, upon
29 the filing in his/her office of any release of such lien
30 issued by the regional counsel for the United States
31 Environmental Protection Agency, record the same and
32 make proper marginal notation thereof in the federal
33 tax lien docket. No fee shall be charged by such clerk
34 for recording of the notice of superfund lien, but he/she
35 shall charge a fee of two dollars for recording such
36 release or partial release.

CHAPTER 116

(Com. Sub. for S. B. 566—By Senator Tucker, Mr. President)

[Passed April 7, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four, five and seven, article six, chapter twenty-four of said code; and to further amend article six of said chapter by adding thereto a new section, designated section six-a, all relating to local emergency telephone systems; sharing of certain authority with public service commission by department of public safety; and allowing department of public safety to participate in developing a comprehensive plan, preparing a proposal and for causing a public meeting therein.

Be it enacted by the Legislature of West Virginia:

That section twelve, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections three, four, five and seven, article six, chapter twenty-four of said code be amended and reenacted; and that article six of said chapter be further amended by adding thereto a new section, designated section six-a, all to read as follows:

Chapter

15. Public Safety.

24. Public Service Commission.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-12. Mission of the department; powers of superintendent, officers and members; patrol of turnpike.

1 (a) The West Virginia department of public safety
2 shall have the mission of statewide enforcement of
3 criminal and traffic laws with emphasis on providing
4 basic enforcement and citizen protection from criminal
5 depredation throughout the state and maintaining the
6 safety of the state's public streets, roads and highways.

7 (b) The superintendent and each of the officers and

8 members of the department are hereby empowered:

9 (1) To make arrests anywhere within the state of any
10 persons charged with the violation of any law of this
11 state, or of the United States, and when a witness to the
12 perpetration of any offense or crime, or to the violation
13 of any law of this state, or of the United States, may
14 arrest without warrant; to arrest and detain any persons
15 suspected of the commission of any felony or misdemea-
16 nor whenever complaint is made and warrant is issued
17 thereon for such arrest, and any person so arrested shall
18 be forthwith brought before the proper tribunal for
19 examination and trial in the county where the offense
20 for which any such arrest has been made was
21 committed;

22 (2) To serve criminal process issued by any court or
23 magistrate anywhere within this state (they shall not
24 serve civil process); and

25 (3) To cooperate with local authorities in detecting
26 crime and in apprehending any person or persons
27 engaged in or suspected of the commission of any crime,
28 misdemeanor or offense against the law of this state, or
29 of the United States, or of any ordinance of any
30 municipality in this state; and to take affidavits in
31 connection with any application to the department of
32 highways, department of motor vehicles and department
33 of public safety of West Virginia for any license, permit
34 or certificate that may be lawfully issued by these
35 departments of state government.

36 (c) Members of the department of public safety are
37 hereby created forest patrolmen and game and fish
38 wardens throughout the state to do and perform any
39 duties and exercise any powers of such officers, and may
40 apprehend and bring before any court or magistrate
41 having jurisdiction of such matters, anyone violating
42 any of the provisions of chapters twenty, sixty and sixty-
43 one of this code, and the department of public safety
44 shall at any time be subject to the call of the West
45 Virginia alcohol beverage control commissioner to aid
46 in apprehending any person violating any of the
47 provisions of said chapter sixty of this code. They shall
48 serve and execute warrants for the arrest of any person
49 and warrants for the search of any premises issued by
50 any properly constituted authority, and shall exercise all

51 of the powers conferred by law upon a sheriff. They
52 shall not serve any civil process or exercise any of the
53 powers of such officer in civil matters.

54 (d) Any member of the department of public safety
55 knowing or having reason to believe that anyone has
56 violated the law may make complaint in writing before
57 any court or officer having jurisdiction and procure a
58 warrant for such offender, execute the same and bring
59 such person before the proper tribunal having jurisdic-
60 tion. He shall make return on all such warrants to such
61 tribunals and his official title shall be "member of the
62 department of public safety." Members of the depart-
63 ment of public safety may execute any summons or
64 process issued by any tribunal having jurisdiction
65 requiring the attendance of any person as a witness
66 before such tribunal and make return thereon as
67 provided by law, and any return by a member of the
68 department of public safety showing the manner of
69 executing such warrant or process shall have the same
70 force and effect as if made by a sheriff.

71 (e) Each member of the department of public safety,
72 when called by the sheriff of any county, or when the
73 governor by proclamation so directs, shall have full
74 power and authority within such county, or within the
75 territory defined by the governor, to direct and com-
76 mand absolutely the assistance of any sheriff, deputy
77 sheriff, chief of police, policeman, game and fish
78 warden, and peace officer of the state, or of any county
79 or municipality therein, or of any able-bodied citizen of
80 the United States, to assist and aid in accomplishing the
81 purposes expressed in this article. When so called, any
82 officer or person shall, during the time his assistance is
83 required, be for all purposes, a member of the depart-
84 ment of public safety and subject to all the provisions
85 of this article.

86 (f) The superintendent may also assign members of
87 the department to perform police duties on any turnpike
88 or toll road, or any section thereof, operated by the West
89 Virginia turnpike commission: *Provided*, That such
90 turnpike commission shall reimburse the department of
91 public safety for salaries paid to such members, and
92 shall either pay directly or reimburse the department
93 for all other expenses of such group of members in

94 accordance with actual or estimated costs determined by
95 the superintendent.

96 (g) The department of public safety may develop
97 proposals for a comprehensive county or multi-county
98 plan on the implementation of an enhanced emergency
99 service telephone system and for causing a public
100 meeting on such proposals, all as set forth in section six-
101 a, article six, chapter twenty-four of this code.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-3. Adoption of emergency telephone system plan; department of public safety to adopt alternate plan.

§24-6-4. Creation of emergency telephone systems.

§24-6-5. Enhanced emergency telephone system requirements.

§24-6-6a. Alternate procedure for proposal by the department of public safety.

§24-6-7. Resolution of conflicts.

§24-6-3. Adoption of emergency telephone system plan;
department of public safety to adopt alternate
plan.

1 (a) The public service commission shall develop, adopt
2 and periodically review a comprehensive plan establish-
3 ing the technical and operational standards to be
4 followed in establishing and maintaining emergency
5 telephone systems.

6 (b) In developing the comprehensive plan, the public
7 service commission shall consult with telephone compan-
8 ies, and with the various public agencies and public
9 safety units, including, but not limited to, emergency
10 services organizations.

11 (c) The public service commission shall annually
12 review with each operating telephone company their
13 construction and switching replacements projections.
14 During this review, the public service commission shall
15 ensure that all new switching facilities will accommo-
16 date the emergency telephone system.

17 (d) The department of public safety shall participate
18 in proceedings conducted under subsection (a) of this
19 section. Additionally, the department of public safety

- 20 may actively participate in the annual review required
21 by subsection (c) of this section.

§24-6-4. Creation of emergency telephone systems.

1 (a) Upon the adoption by the public service commis-
2 sion of a comprehensive plan, the public agency may
3 establish, consistent with the comprehensive plan, an
4 emergency telephone system within its respective
5 jurisdiction. Nothing herein contained, however, shall be
6 construed to prohibit or discourage in any way the
7 establishment of multijurisdiction or regional systems,
8 and any emergency telephone system established
9 pursuant to this article may include the territory of
10 more than one public agency, or may include only a
11 portion of the territory of a public agency. To the extent
12 feasible, emergency telephone systems shall be
13 centralized.

14 (b) Every emergency telephone system shall provide
15 access to emergency services organizations, police, fire
16 fighting, and emergency medical and ambulance
17 services and may provide access to other emergency
18 services. Such system may also provide access to private
19 ambulance services. The emergency telephone system
20 shall provide the necessary mechanical equipment at the
21 established public agency answering point to allow deaf
22 persons access to the system. In those areas in which a
23 public safety unit of the state provides emergency
24 services, the system shall provide access to the public
25 safety unit.

26 (c) The primary emergency telephone number to the
27 extent possible shall be uniform throughout the state.

28 (d) A telephone company in the normal course of
29 replacing or making major modifications to its switch-
30 ing equipment shall include the capability of providing
31 for the emergency telephone system and shall bear all
32 costs related thereto. All charges for other services and
33 facilities provided by the telephone company, including
34 the provision of distribution facilities and station
35 equipment, shall be paid for by the public agency or
36 public safety unit in accordance with the applicable
37 tariff rates then in effect for such services and facilities.

38 Other costs pursuant to the emergency telephone system
39 shall be allocated as determined by the applicable
40 comprehensive plan of the public service commission.

41 (e) All coin-operated telephones within the state shall
42 be of a design that will permit a caller to initiate,
43 without first having to insert a coin (dial tone first or
44 post-pay systems), local calls to the long distance and
45 directory assistance operators, calls to the emergency
46 telephone number answering point, if one has been
47 established in his or her local calling area, and to other
48 numbers for services as the telephone company may
49 from time to time make available to the public.

§24-6-5. Enhanced emergency telephone system requirements.

1 (a) An enhanced emergency telephone system, at a
2 minimum, shall provide that:

3 (1) All the territory in the county, including every
4 municipal corporation in the county, which is served by
5 telephone company central office equipment that will
6 permit such a system to be established shall be included
7 in the system;

8 (2) Every emergency service provider that provides
9 emergency service within the territory of a county
10 participate in the system;

11 (3) Each county answering point be operated
12 constantly;

13 (4) Each emergency service provider participating in
14 the system maintain a telephone number in addition to
15 the one provided for in the system; and

16 (5) If the county answering point personnel reasona-
17 bly determine that a call is not an emergency the
18 personnel provide the caller with the number of the
19 appropriate emergency service provider.

20 (b) To the extent possible, enhanced emergency
21 telephone systems shall be centralized.

22 (c) In developing an enhanced emergency telephone
23 system, the county commission or the department of

24 public safety shall seek the advice of both the telephone
25 companies providing local exchange service within the
26 county and the local emergency providers.

§24-6-6a. Alternate procedure for proposal by the department of public safety.

1 (a) In any county or counties which have areas thereof
2 not receiving service from an enhanced emergency
3 services telephone system, the department of public
4 safety may prepare a proposal on the implementation of
5 such a system and may cause a public meeting to be held
6 on the proposal to explain the system and receive
7 comments from the members of the county commission
8 and from other public officials and interested persons.
9 At least thirty, but not more than sixty days, before such
10 a meeting, the department of public safety shall place
11 an advertisement in a newspaper of general circulation
12 in the county notifying the members of the county
13 commission or county commission and the public of the
14 date, purpose and location of the meeting and the
15 location at which a copy of the proposal may be
16 examined.

17 (b) The proposal prepared by the department of
18 public safety shall conform to the requirements of
19 subsection (b), section six of this article and shall be
20 further modified, adopted, filed or amended by the
21 county commission only in conformity with said section
22 six.

§24-6-7. Resolution of conflicts.

1 In the event that a conflict arises between county
2 commissions, between telephone companies, between a
3 telephone company or companies and a county commis-
4 sion or commissions, or between the department of
5 public safety and any of the foregoing entities
6 concerning an emergency telephone system or systems
7 or an enhanced emergency telephone system or systems,
8 the public service commission, upon application by such
9 county commission, telephone company or department of
10 public safety, shall resolve such conflict. The resolution
11 of such conflict may include the modification or
12 suspension of any final plan adopted pursuant to section

13 six or six-a of this article or the ordering of the
14 centralization of emergency telephone systems and
15 enhanced emergency telephone systems.

CHAPTER 117

(Com. Sub. for H. B. 2392—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed March 24, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the creation of a lottery education fund and lottery senior citizens fund; providing for the appropriation of all of the net profits deposited into the state lottery fund on an annual basis to the lottery education fund, the lottery senior citizens fund, and to the commerce division; and specifying the purposes for which such net profits may be used.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.

- 1 (a) There is hereby created a special fund in the state
- 2 treasury which shall be designated and known as the
- 3 "state lottery fund." The fund shall consist of all
- 4 appropriations to the fund and all interest earned from

5 investment of the fund, and any gifts, grants or
6 contributions received by the fund. All revenues
7 received from the sale of lottery tickets, materials and
8 games shall be deposited with the state treasurer and
9 placed into the "state lottery fund." The revenue shall
10 be disbursed in the manner herein provided for the
11 purposes stated herein and shall not be treated by the
12 auditor and treasurer as part of the general revenue of
13 the state.

14 (b) No appropriation, loan or other transfer of state
15 funds shall be made to the commission or lottery fund
16 after the initial appropriation. The initial appropriation
17 shall be used solely for the establishment and operation
18 of the commission and lottery operations during the
19 period until the lottery becomes a revenue-producing
20 agency but no longer than eighteen months. After such
21 period, but in no event longer than eighteen months
22 from the effective date of this article, the commission
23 shall commence repayment to the state general revenue
24 fund of the amount of the initial appropriation from the
25 general revenue fund to be repaid in equal installments
26 over the ensuing twelve months from the funds provided
27 in subsection (e) below.

28 (c) A minimum annual average of forty-five percent
29 of the gross amount received from each lottery shall be
30 allocated and disbursed as prizes.

31 (d) A minimum annual average of forty percent of the
32 gross amount received from each lottery shall be
33 allocated as net profit. The director is authorized to
34 expend the necessary percentage of the amount allo-
35 cated as net profit, not to exceed fifteen percent thereof,
36 for the purposes of entering into contractual arrange-
37 ments for the acquisition, financing, lease and lease-
38 purchase, and other financing transactions, of lottery
39 goods and services, including tickets, equipment,
40 machinery, electronic computer systems and terminals,
41 and supplies and maintenance therefor, for the first
42 thirty-six months of operation, and may apportion the
43 costs, expenses and expenditures related thereto among
44 the commission, vendor or vendors and licensed lottery
45 sales agents.

46 (e) Not more than fifteen percent of the gross amount
47 received from each lottery shall be allocated to and may
48 be disbursed as necessary for fund operation and
49 administration expenses: *Provided*, That in the initial
50 year of operation not more than twenty percent may be
51 so allocated and disbursed. In the event that the
52 percentage allotted for operations and administration
53 generates a surplus, the surplus will be allowed to
54 accumulate to an amount not to exceed two hundred
55 fifty thousand dollars. On a monthly basis the director
56 shall report to the joint committee on government and
57 finance of the Legislature any surplus in excess of two
58 hundred fifty thousand dollars and remit to the state
59 treasurer the entire amount of those surplus funds in
60 excess of two hundred fifty thousand dollars which shall
61 be allocated as net profit.

62 (f) Annually, the Legislature shall appropriate all of
63 the amounts allocated as net profits above, in such
64 proportions as it deems beneficial to the citizens of this
65 state, to (1) the lottery education fund created in
66 subsection (g) of this section, (2) the lottery senior
67 citizens fund created in subsection (h) of this section,
68 and (3) the commerce division created in article one,
69 chapter five-b of this code, in accordance with subsec-
70 tion (i) of this section.

71 (g) There is hereby created a special fund in the state
72 treasury which shall be designated and known as the
73 "lottery education fund." The fund shall consist of the
74 amounts allocated pursuant to subsection (f) of this
75 section, which amounts shall be deposited into the
76 lottery education fund by the state treasurer. The lottery
77 education fund shall also consist of all interest earned
78 from investment of the lottery education fund, and any
79 other appropriations, gifts, grants, contributions or
80 moneys received by the lottery education fund from any
81 source. The revenues received or earned by the lottery
82 education fund shall be disbursed in the manner
83 provided below and shall not be treated by the auditor
84 and treasurer as part of the general revenue of the state.
85 Annually, the Legislature shall appropriate the re-

86 venues received or earned by the lottery education fund
87 to the state system of public and higher education for
88 such educational programs as it considers beneficial to
89 the citizens of this state.

90 (h) There is hereby created a special fund in the state
91 treasury which shall be designated and known as the
92 "lottery senior citizens fund." The fund shall consist of
93 the amounts allocated pursuant to subsection (f) of this
94 section, which amounts shall be deposited into the
95 lottery senior citizens fund by the state treasurer. The
96 lottery senior citizens fund shall also consist of all
97 interest earned from investment of the lottery senior
98 citizens fund, and any other appropriations, gifts,
99 grants, contributions or moneys received by the lottery
100 senior citizens fund from any source. The revenues
101 received or earned by the lottery senior citizens fund
102 shall be disbursed in the manner provided below and
103 shall not be treated by the auditor or treasurer as part
104 of the general revenue of the state. Annually, the
105 Legislature shall appropriate the revenues received or
106 earned by the lottery senior citizens fund to such senior
107 citizens medical care and other programs as it considers
108 beneficial to the citizens of this state.

109 (i) The commerce division may use the amounts
110 allocated to it pursuant to subsection (f) of this section
111 for one or more of the following purposes: (1) The
112 payment of any or all of the costs incurred in the
113 development, construction, reconstruction, maintenance
114 or repair of any project or recreational facility, as such
115 terms are defined in section thirteen-a, article one,
116 chapter five-b of this code, pursuant to the authority
117 granted to it under article one, chapter five-b of this
118 code, (2) the payment, funding or refunding of the
119 principal of, interest on, or redemption premiums on
120 any bonds, security interests or notes issued by the parks
121 and recreation section of the commerce division under
122 article one, chapter five-b of this code, or (3) the
123 payment of any advertising and marketing expenses for
124 the promotion and development of tourism or any tourist
125 facility or attraction in this state.

CHAPTER 118

(S. B. 55—By Senator Tucker, Mr. President, by request)

[Passed April 7, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the number of magistrate court deputy clerks.

Be it enacted by the Legislature of West Virginia:

That section nine-a, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COURTS AND OFFICERS.

§50-1-9a. Magistrate court deputy clerks; salary; duties.

1 Whenever required by work load and upon the
2 recommendation of the judge of the circuit court, or the
3 chief judge thereof if there is more than one judge of
4 the circuit court, the supreme court of appeals may by
5 rule provide for the appointment of magistrate court
6 deputy clerks, not to exceed fifty-two in number. Such
7 magistrate court deputy clerks shall be appointed by the
8 judge of the circuit court, or the chief judge thereof if
9 there is more than one judge of the circuit court, with
10 such appointee to serve at his will and pleasure under
11 the immediate supervision of the magistrate court clerk.
12 Such magistrate court deputy clerk shall have such
13 duties, clerical or otherwise, as may be assigned by the
14 magistrate court clerk and as may be prescribed by the
15 rules of the supreme court of appeals or the judge of the
16 circuit court, or the chief judge thereof if there is more
17 than one judge of the circuit court. Such magistrate
18 court deputy clerks shall also have authority to exercise
19 the power and perform the duties of the magistrate
20 court clerk as may be delegated or assigned by such
21 magistrate court clerk.

22 Such magistrate court deputy clerk shall not be a

23 member of the immediate family of any magistrate,
24 magistrate court clerk, magistrate assistant or circuit
25 court judge within the same county, shall not have been
26 convicted of a felony or any misdemeanor involving
27 moral turpitude and shall reside in the county where
28 appointed. For the purpose of this section, immediate
29 family shall mean the relationships of mother, father,
30 sister, brother, child or spouse.

31 Magistrate court deputy clerks shall be paid a
32 monthly salary by the state. Such salary shall be paid
33 on the same basis and in the same applicable amounts
34 as for magistrate assistants in each county as provided
35 in section nine of this article.

CHAPTER 119

(H. B. 22598—By Delegates White and Murensky)

[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the medicaid program; health care facilities financed by bonds; extension of rules regarding reimbursement of capital costs.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-14. Medicaid program; health care facilities financed by bonds; rules regarding reimbursement of capital costs.

- 1 (a) The Legislature finds and declares that a number
- 2 of health care facilities have been financed by public
- 3 bonded indebtedness, and as a result of policies, rules,
- 4 regulations and standards which may be in conflict, the

5 facilities and the health and welfare of those citizens
6 served by such facilities are in jeopardy. The provisions
7 of subsection (b) are enacted for the purpose of address-
8 ing this as a short term solution.

9 (b) As to any health care facility licensed under
10 article five-c, chapter sixteen of this code, constructed
11 after the first day of April, one thousand nine hundred
12 eighty-one, and affected on or after that date by the
13 reimbursement methodology implemented by the de-
14 partment regarding standard appraised value, begin-
15 ning on the first day of April, one thousand nine
16 hundred eighty-eight, and for a two-year period only,
17 ending on the thirty-first day of March, one thousand
18 nine hundred ninety, all in compliance with federal
19 rules and regulations, the department shall reimburse
20 such health care facilities no less than any actual annual
21 capital costs including, but not limited to, debt service,
22 lease payments or costs of comparable financing
23 arrangements incurred in connection with any capital
24 expenditure approved pursuant to article two-d, chapter
25 sixteen of this code, or any rule or regulation promul-
26 gated thereunder or in conjunction with the financing
27 of such capital expenditure pursuant to article two-c,
28 chapter thirteen of this code, whichever is greater; and
29 in no event, for the purpose of reimbursement of such
30 capital costs, shall the value of any health care facility
31 licensed pursuant to article five-c, chapter sixteen of this
32 code, be deemed to be less than the greater of the
33 aggregate principal amount of any public bond issue
34 undertaken pursuant to the provisions of article two-c,
35 chapter thirteen of this code or the maximum capital
36 expenditure approved pursuant to article two-d, chapter
37 sixteen of this code or any rule or regulation promul-
38 gated thereunder, and any appraisal made by the
39 department in connection therewith shall include costs
40 related to the financing of the bond issue or the
41 maximum capital expenditure approved pursuant to
42 article two-d, chapter sixteen of this code, as applicable:
43 *Provided*, That said values may be reduced by (a) any
44 functional obsolescence which is determined and
45 identified annually pursuant to any rule or regulation
46 promulgated hereunder and (b) the pro rata share of

47 such value which is attributable to capital expenditures
48 incurred with respect to facilities which provide services
49 which are not eligible for reimbursement under Title
50 XIX of the Social Security Act: *Provided, however*, That
51 the department shall not exceed the medicare upper
52 payment limit for medicaid in making any reimburse-
53 ment pursuant to this section.

54 As to any health care facility constructed after the
55 first day of April, one thousand nine hundred eighty-
56 one, and affected on or after that date by the reimbur-
57 sement methodology implemented by the department
58 regarding standard appraised value, with respect to
59 reimbursement to the state by such health care facility
60 arising from adjustment of projected rates, the depart-
61 ment shall provide for the adjustment of projected rates
62 based upon values which are consistent with the
63 provisions of this section and based upon the actual
64 occupancy experience of the health care facility during
65 the projected rate period, all in compliance with federal
66 rules and regulations.

67 (c) The medicaid payments that a long-term care
68 facility would otherwise receive shall not be reduced in
69 any manner as a result of the operation of this section.

CHAPTER 120

(H. B. 2758—By Delegates Anderson and Love)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special registration plates; authorizing the commissioner of motor vehicles to determine the maximum number of letters or numbers on special registration plates; providing for a special registration plate for recipients of the purple heart medal and exempting such plates from registration fees; providing for special registration plates bearing logos or emblems of non-profit charitable and educational organizations to members of such organizations and to the general

public, and providing that such special registration plates are to comply with the fees and law regarding Class A registration plates; authorizing legislative rules; authorizing the commissioner of motor vehicles to set certain fees; setting fees; providing for a special registration plate for members of volunteer fire companies, paid fire departments, state fire marshal and assistants, state fire administrator and voluntary rescue squad members, setting the fee therefor, and establishing a special revolving fund; and providing sanctions for a check which is returned for nonsufficient funds.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;
ISSUANCE OF CERTIFICATES OF TITLE.**

§17A-3-14. Registration plates generally.

1 The department upon registering a vehicle shall issue
2 to the owner one registration plate for a motorcycle,
3 trailer, semitrailer or other motor vehicle.

4 Every registration plate shall be of reflectorized
5 material and have displayed upon it the registration
6 number assigned to the vehicle for which it is issued,
7 also the name of this state, which may be abbreviated,
8 and the year number for which it is issued or the date
9 of expiration thereof.

10 Such registration plate and the required letters and
11 numerals thereon, except the year number for which
12 issued or the date of expiration, shall be of sufficient size
13 to be plainly readable from a distance of one hundred
14 feet during daylight, said registration numbering to
15 begin with number two.

16 The department shall not issue, permit to be issued,
17 or distribute any special numbers except as follows:

18 (a) The governor shall be issued registration plates, on
19 one of which shall be imprinted the numeral one and
20 on the other the word one.

21 (b) Upon appropriate application, there shall be
22 issued to the secretary of state, state superintendent of
23 free schools, auditor, treasurer, commissioner of agricul-
24 ture, and the attorney general, the members of both
25 houses of the Legislature, including the elected officials
26 thereof, the justices of the supreme court of appeals of
27 West Virginia, the representatives and senators of the
28 state in the Congress of the United States, the judges
29 of the United States district courts for the state of West
30 Virginia and the judges of the United States court of
31 appeals for the fourth circuit, if any of said judges shall
32 be residents of West Virginia, a special registration
33 plate for a motor vehicle owned by said official or
34 spouse, but not to exceed two plates for each such
35 official, which plate shall bear any combination of
36 letters not to exceed an amount determined by the
37 commissioner, and with a designation of the office and
38 which plate shall supersede, during his term of office
39 and while such motor vehicle is owned by said official
40 or spouse, the regular numbered plate assigned to him.

41 (c) Upon receipt of an application on a form pres-
42 cribed by the department and receipt of written
43 evidence from the chief executive officer of the army
44 national guard or air national guard, as appropriate,
45 that the applicant is a member thereof, the department
46 shall issue to any member of the national guard of this
47 state a special registration plate designed by the
48 commissioner for a motor vehicle owned by the member
49 or the member's spouse, but not to exceed one plate for
50 each such member.

51 (d) Upon appropriate application, any owner of a
52 motor vehicle subject to Class A registration or the
53 owner of a motorcycle subject to Class G registration
54 under the provisions of this article may request that the
55 department issue a registration plate bearing specially
56 arranged letters or numbers with the maximum
57 number of letters or numbers to be determined by the
58 commissioner. The department shall attempt to comply
59 with such request wherever possible and shall promul-
60 gate appropriate rules and regulations for the orderly
61 distribution of such plates: *Provided*, That for purposes
62 of this subdivision, such registration plates so requested

63 and issued shall include all plates bearing the numbers
64 two through two thousand and shall be subject to the
65 provisions of subdivision (i) of this section.

66 (e) Upon appropriate application, there shall be
67 issued to any disabled veteran, who is exempt from the
68 payment of registration fees under the provisions of this
69 chapter, a registration plate which bears the letters
70 "DV" in red, and also the regular identification
71 numerals in red.

72 (f) Upon appropriate application, there shall be issued
73 to any armed service person holding the distinguished
74 purple heart medal for persons wounded in combat a
75 registration plate bearing letters or numbers. The
76 registration plate designed by the commissioner of
77 motor vehicles shall denote that those individuals who
78 are granted this special registration plate are recipients
79 of the purple heart. All letterings as herein provided
80 shall be in purple where practical. Further, the
81 registration plates herein provided shall be exempt from
82 registration fees under the provisions of this chapter.

83 (g) Subject to rules promulgated by the commissioner,
84 nonprofit charitable and educational organizations shall
85 be authorized to design a logo or emblem for inclusion
86 on a special registration plate and to market this special
87 registration plate to organization members and the
88 general public. Approved nonprofit organizations may
89 accept applications for the special registration plate
90 from the owner of motor vehicles subject to a Class A
91 registration and payment of fees therefor under the
92 provisions of this article and may request that the
93 department issue a registration plate bearing a
94 combination of letters or numbers with the organiza-
95 tions' logo or emblem, with the maximum number of
96 letters or numbers to be determined by the commis-
97 sioner: *Provided*, That such rules, regulations and
98 standards that are promulgated by the commissioner for
99 purpose of this subdivision shall be promulgated in
100 accordance with the provisions of chapter twenty-nine-
101 a of this code. Nonprofit organizations seeking to market
102 such plates shall be authorized to collect a fee for
103 successfully processing a registration plate application

104 and shall deposit an appropriate fee, which shall be
105 determined by the commissioner, with the department
106 of motor vehicles to defray the administrative costs
107 associated with designing and manufacturing special
108 registration plates for the organization.

109 (h) Any owner of a motor vehicle who is a resident of
110 the state of West Virginia, and who is a member of a
111 volunteer fire company, a paid fire department, a
112 member of the state fire commission, the state fire
113 marshal, the state fire marshal's assistants, the state fire
114 administrator and voluntary rescue squad members
115 upon application, accompanied by an affidavit signed by
116 the fire chief or department head of the applicant,
117 stating that the applicant is justified in having a
118 registration with an insignia designed by the commis-
119 sioner of the department of motor vehicles to denote
120 those individuals who are granted special registration
121 plates under this article, complying with the motor
122 vehicle laws of the state relative to registration and
123 licensing of motor vehicles, and upon payment of the
124 registration, license and other fees required by law, and
125 the payment of the additional special fee herein
126 provided, shall be issued a license plate for a private
127 passenger car, upon which, in lieu of the registration
128 number prescribed by law, shall be inscribed the
129 insignia designed by the commissioner of the depart-
130 ment of motor vehicles to denote those individuals who
131 are granted this special registration insignia in addition
132 to their existing registration numbers.

133 The special fee that shall be charged each applicant
134 for the issuance of a license plate bearing the insignia
135 designed by the commissioner of the department of
136 motor vehicles to denote those individuals who are
137 granted this special registration insignia in addition to
138 their existing registration number, shall be five dollars,
139 which special fee shall be in addition to all other fees
140 required by law. This special fee is for the purpose of
141 compensating the department of motor vehicles for
142 additional costs and services required in the issuing of
143 such special registration and shall be collected by the
144 department and deposited in a special revolving fund to
145 be used for the administration of this section.

146 The commissioner is authorized to prescribe proper
147 forms to be used in making application for the special
148 license plates authorized by this section.

149 (i) In addition to the regular registration fees set forth
150 in section three, article ten of this chapter, a fee of
151 fifteen dollars shall be paid to the department in each
152 case in which an application for a special registration
153 plate is made as provided in subdivisions (a), (b), (c) and
154 (d): *Provided*, That nothing in this section shall be
155 construed to require a charge for a free prisoner of war
156 license plate authorized by other provisions of this code.

157 Notwithstanding the provisions of this section, or of
158 any other provision of this chapter, the commissioner
159 may, in his discretion, issue a type of registration plate
160 of reflectorized material suitable for permanent use on
161 motor vehicles, trailers and semitrailers, together with
162 appropriate devices to be attached thereto to indicate
163 the year for which such vehicles have been properly
164 registered or the date of expiration of such registration.
165 The design of such plates shall be determined by the
166 commissioner.

167 Further, notwithstanding any provisions of this
168 chapter to the contrary, any license plate issued or
169 renewed pursuant to this chapter, which is paid for by
170 a check that is returned for nonsufficient funds, shall
171 be void without further notice to the applicant, and the
172 applicant may not reinstate the registration until the
173 returned check is paid by the applicant in cash, money
174 order or certified check and all applicable fees assessed
175 as a result thereof have been paid.

CHAPTER 121

(H. B. 2257—By Delegates Reid and Pitrolo)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven and eight,
article eight, chapter seventeen-a of the code of West
Virginia, one thousand nine hundred thirty-one, as

amended, relating to motor vehicle administration; special antitheft laws; defining certain felony offenses with regard to buying, receiving, disposing of, selling, offering for sale, concealing, transporting, causing to be transported, or possessing a motor vehicle, or a motor or engine removed from a motor vehicle, from which the manufacturer's serial number, motor or engine number or other distinguishing number or identifying mark has been removed, defaced, covered, altered or destroyed, which offenses are subject to criminal penalties; and defining certain felony offenses with regard to removing, defacing, covering, altering or destroying a manufacturer's serial number, motor or engine number or other distinguishing number or identifying mark, which offenses are subject to criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections seven and eight, article eight, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 8. SPECIAL ANTITHEFT LAWS.

§17A-8-7. Motor vehicle or special mobile equipment without manufacturer's serial number, motor or engine number or other distinguishing number or identification mark; offenses.

§17A-8-8. Altering or changing a manufacturer's serial number, motor or engine number or other distinguishing number or identification mark; offenses.

§17A-8-7. Motor vehicle or special mobile equipment without manufacturer's serial number, motor or engine number or other distinguishing number or identification mark; offenses.

- 1 (a) A person who knowingly buys, receives, disposes
- 2 of, sells, offers for sale, conceals, transports, causes to
- 3 be transported, or possesses a motor vehicle, or a motor
- 4 or engine removed from a motor vehicle, from which the
- 5 manufacturer's serial number, motor or engine number
- 6 or other distinguishing number or identification mark
- 7 has been removed, defaced, covered, altered or des-
- 8 troyed for the purpose of concealing or misrepresenting

9 the identity of the motor vehicle or part thereof, is guilty
10 of a felony.

11 (b) A person who knowingly buys, receives, disposes
12 of, sells, offers for sale, conceals, transports, causes to
13 be transported, or possesses special mobile equipment or
14 special mobile equipment tires from which the manu-
15 facturer's serial number, motor or engine number or
16 other distinguishing number or identification mark has
17 been removed, defaced, covered, altered or destroyed, is
18 guilty of a felony.

**§17A-8-8. Altering or changing a manufacturer's serial
number, motor or engine number or other
distinguishing number or identification
mark; offenses.**

1 (a) A person who, with fraudulent intent, removes,
2 defaces, covers, alters or destroys the manufacturer's
3 serial number, motor or engine number or other
4 distinguishing number or identification mark of a motor
5 vehicle or who places or stamps an actual or facsimile
6 manufacturer's serial number, motor or engine number
7 or other distinguishing number or identification mark
8 upon a motor vehicle, except one assigned thereto by the
9 department, is guilty of a felony.

10 This section shall not prohibit the restoration by an
11 owner of an original manufacturer's serial number,
12 motor or engine number or other distinguishing number
13 or identification mark when such restoration is made
14 under permit issued by the department, nor prevent any
15 manufacturer from placing numbers or marks upon
16 motor vehicles or parts thereof in the ordinary course
17 of business.

18 (b) A person who removes, defaces, covers, alters or
19 destroys, or causes to be removed, defaced, covered,
20 altered or destroyed, the manufacturer's serial number,
21 motor or engine number or other distinguishing number
22 or identification mark on special mobile equipment or
23 special mobile equipment tires, the property of another,
24 for any reason, is guilty of a felony.

25 (c) The term "manufacturer's serial number, motor or

26 engine number or other distinguishing number or
27 identification mark", as used in this section and section
28 seven of this article, means a unique number or mark
29 placed on a vehicle or part thereof by the manufacturer
30 so as to identify it particularly and distinguish the
31 vehicle or part from all other such vehicles or parts.

CHAPTER 122

(H. B. 2345—By Delegate Pitrolo)

[Passed April 4, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special registration of antique motor vehicles; providing that vehicles so registered may be operated on Saturdays and Sundays and holidays for recreational purposes.

Be it enacted by the Legislature of West Virginia:

That section three-a, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3a. Special registration of antique motor vehicles.

1 The annual registration fee for any antique motor
2 vehicle as defined in this section shall be two dollars.
3 "Antique motor vehicle" shall mean any motor vehicle
4 which is over twenty-five years old, and is owned solely
5 as a collector's item and for participation in club
6 activities, exhibitions, tours, parades and similar uses,
7 but in no event to be used for general transportation:
8 *Provided*, That such vehicle may also be operated for
9 recreational purposes on Saturdays and Sundays and
10 holidays.

CHAPTER 123

(H. B. 2642—By Delegates Ashcraft and Prezioso)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to authority of members of official highway department weighing crews and public service commission, motor carrier employees.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four, to read as follows:

ARTICLE 11. PENALTIES.

§17A-11-4. Authority of members of official highway department weighing crews and public service commission, motor carrier employees.

- 1 Employees of the department of highways designated
- 2 by the commissioner of highways as weight enforcement
- 3 officers and employees of the public service commission
- 4 designated by the chairman as motor carrier utility
- 5 inspectors, shall, during the course of their normal
- 6 duties, have concurrent jurisdiction with police officers
- 7 in the enforcement of article nine of this chapter.

CHAPTER 124

(S. B. 275—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article three, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to suspension or revocation of license; notice to be sent

by certified mail, return receipt requested; and opportunity for hearing.

Be it enacted by the Legislature of West Virginia:

That section six, article three, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-6. Authority of department to suspend or revoke license; hearing.

1 The department is hereby authorized to suspend the
2 license of an operator or chauffeur without preliminary
3 hearing upon a showing by its records or other sufficient
4 evidence that the licensee:

5 (1) Has committed an offense for which mandatory
6 revocation of license is required upon conviction;

7 (2) Has by reckless or unlawful operation of a motor
8 vehicle, caused or contributed to an accident resulting
9 in the death or personal injury of another or property
10 damage;

11 (3) Has been convicted with such frequency of serious
12 offenses against traffic regulations governing the
13 movement of vehicles as to indicate a disrespect for
14 traffic laws and a disregard for the safety of other
15 persons on the highways;

16 (4) Is an habitually reckless or negligent driver of a
17 motor vehicle;

18 (5) Is incompetent to drive a motor vehicle;

19 (6) Has permitted an unlawful or fraudulent use of
20 such license;

21 (7) Has committed an offense in another state which
22 if committed in this state would be a ground for
23 suspension or revocation;

24 (8) Has failed to pay or has defaulted on a plan for
25 the payment of all costs, fines, forfeitures or penalties
26 imposed by a magistrate court or municipal court
27 within ninety days, as required by section two-a, article
28 ten, chapter eight of this code;

29 (9) Has failed to appear or otherwise respond before

30 a magistrate court or municipal court when charged
31 with a motor vehicle violation as defined in section
32 three-a, article three, chapter seventeen-b of this code;
33 or

34 (10) Is under the age of eighteen and has withdrawn
35 either voluntarily or involuntarily from a secondary
36 school, as provided in section eleven, article eight,
37 chapter eighteen of this code.

38 The operator's or chauffeur's license of any person
39 having his or her license suspended shall be reinstated
40 if:

41 (A) The license was suspended under the provisions of
42 subdivision (8) of this section and the payment of costs,
43 fines, forfeitures or penalties imposed by the applicable
44 court has been made; or

45 (B) The license was suspended under the provisions of
46 subdivision (9) of this section, and the person having his
47 or her license suspended has appeared in court and has
48 prevailed against the motor vehicle violations charged,
49 or such person has paid any and all costs, fines,
50 forfeitures or penalties imposed by the applicable court.

51 Any reinstatement of a license under paragraph (A)
52 or (B) of this subdivision shall be subject to a reinstatement
53 fee designated in section nine of this article.

54 Upon suspending the license of any person as herein-
55 before in this section authorized, the department shall
56 immediately notify the licensee in writing, sent by
57 certified mail, return receipt requested, to the address
58 given by the licensee in applying for license, and upon
59 his request shall afford him an opportunity for a hearing
60 as early as practical within not to exceed twenty days
61 after receipt of such request in the county wherein the
62 licensee resides unless the department and the licensee
63 agree that such hearing may be held in some other
64 county. Upon such hearing the commissioner or his duly
65 authorized agent may administer oaths and may issue
66 subpoenas for the attendance of witnesses and the
67 production of relevant books and papers and may
68 require a reexamination of the licensee. Upon such
69 hearing the department shall either rescind its order of
70 suspension or, good cause appearing therefor, may

72 extend the suspension of such license or revoke such
73 license.

CHAPTER 125

(Com. Sub. for H. B. 2389—By Delegates Metheney and Murensky)

[Passed April 5, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to expanding the definition of law-enforcement officers for purposes of serious traffic offenses to include conservation officers of the department of natural resources; and authorizing such officers to request the testing of blood, breath or urine to be conducted by other authorized law-enforcement officers.

Be it enacted by the Legislature of West Virginia:

That section four, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-4. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

1 Any person who drives a motor vehicle in this state
2 shall be deemed to have given his consent by the
3 operation thereof, subject to the provisions of this
4 article, to a preliminary breath analysis and a secondary
5 chemical test of either his blood, breath or urine for the
6 purposes of determining the alcoholic content of his
7 blood. A preliminary breath analysis may be adminis-
8 tered in accordance with the provisions of section five
9 of this article whenever a law-enforcement officer has
10 reasonable cause to believe a person to have committed
11 an offense prohibited by section two of this article or by
12 an ordinance of a municipality of this state which has
13 the same elements as an offense described in said section
14 two of this article. A secondary test of blood, breath or
15 urine shall be incidental to a lawful arrest and shall be

16 administered at the direction of the arresting law-
17 enforcement officer having reasonable grounds to
18 believe the person to have committed an offense
19 prohibited by section two of this article or by an
20 ordinance of a municipality of this state which has the
21 same elements as an offense described in said section
22 two of this article. The law-enforcement agency by
23 which such law-enforcement officer is employed shall
24 designate which one of the aforesaid secondary tests
25 shall be administered: *Provided*, That if the test so
26 designated is a blood test and the person so arrested
27 refuses to submit to such blood test, then the law-
28 enforcement officer making such arrest shall designate
29 in lieu thereof, either a breath or urine test to be
30 administered, and notwithstanding the provisions of
31 section seven of this article, such refusal to submit to
32 a blood test only shall not result in the revocation of the
33 arrested person's license to operate a motor vehicle in
34 this state. Any person to whom a preliminary breath test
35 is administered who is then arrested shall be given a
36 written statement advising him that his refusal to
37 submit to the secondary chemical test finally designated
38 as provided in this section, will result in the revocation
39 of his license to operate a motor vehicle in this state for
40 a period of at least one year and up to life.

41 For the purpose of this article the term "law-
42 enforcement officer" or "police officer" shall mean and
43 be limited to (1) any member of the department of
44 public safety of this state, (2) any sheriff and any deputy
45 sheriff of any county, (3) any member of a police
46 department in any municipality as defined in section
47 two, article one, chapter eight of this code, and (4) any
48 conservation officer of the department of natural
49 resources. If any municipality or the department of
50 natural resources does not have available to its law-
51 enforcement officers the testing equipment or facilities
52 necessary to conduct any secondary test which a law-
53 enforcement officer may administer under this article,
54 any member of the department of public safety, the
55 sheriff of the county wherein the arrest is made or any
56 deputy of such sheriff or any municipal law-enforcement
57 officer of another municipality within the county
58 wherein the arrest is made may, upon the request of

59 such arresting law-enforcement officer and in his
60 presence, conduct such secondary test and the results of
61 such test may be used in evidence to the same extent
62 and in the same manner as if such test had been
63 conducted by such arresting law-enforcement officer.
64 Only the person actually administering or conducting
65 such test shall be competent to testify as to the results
66 and the veracity of such test.

CHAPTER 126

(Com. Sub. for H. B. 2170—By Delegates Flanigan and Basham)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five-b, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting postmortem blood alcohol tests as admissible evidence; disclosure of data compiled from blood alcohol test results; and disclosure of identities of decedents tested.

Be it enacted by the Legislature of West Virginia:

That section two, article five-b, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 5B. POSTMORTEM TESTS FOR ALCOHOL IN PERSONS
KILLED IN MOTOR VEHICLE ACCIDENTS.**

**§17C-5B-2. To whom and how county medical examiners
report results of blood tests; such reports
admissible as evidence; use of reports for
statistical and highway safety purposes.**

1 Each county medical examiner shall immediately
2 report the results of each blood test conducted under the
3 authority of section one of this article by him, or
4 conducted at his request, to the chief medical examiner
5 of the office of medical examinations and to the
6 department of public safety. Results of such blood test
7 or any report thereof may be admissible in evidence, if

8 material, in any action or proceeding of any kind in any
9 court or before any tribunal, board or agency.

10 The department of public safety shall compile the data
11 from all such reports submitted to it on a monthly basis.
12 The department shall forward such compilations to the
13 governor's highway safety administration and the
14 department of motor vehicles. Such compilations shall
15 be for statistical purposes and highway safety informa-
16 tion and be disclosed or revealed in any manner
17 necessary. The identity of any dead person whose blood
18 was tested under the provisions of section one of this
19 article may be disclosed or revealed when necessary for
20 evidence in any action or proceeding of any kind in any
21 court or before any tribunal, board or agency.

22 The department of public safety, the governor's
23 highway safety administration and the department of
24 motor vehicles shall make use of such compilations in
25 a manner to provide accurate and useful statistical
26 information to government and the public relative to
27 achieving a reduction in motor vehicle accidents arising
28 in whole or in part from the imbibing of alcohol by
29 motor vehicle drivers and adult pedestrians.

CHAPTER 127

(H. B. 2296—By Delegate Ryan)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale of school buses; and allowing motorists to continue movement in certain situations involving stopped school buses on controlled access highways.

Be it enacted by the Legislature of West Virginia:

That section seven, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12. SPECIAL STOPS REQUIRED.

§17C-12-7. Overtaking and passing school bus; penalties; signs and warning lights upon buses; removal of warning lights, lettering, etc., upon sale of buses; highways with separate roadways.

1 (a) The driver of a vehicle on any street or highway
2 upon meeting or overtaking from either direction any
3 school bus which has stopped on the highway for the
4 purpose of receiving or discharging any school children
5 shall stop the vehicle before reaching such school bus
6 when there is in operation on said school bus flashing
7 warning signal lights, as referred to in section eight of
8 this article, and said driver shall not proceed until such
9 school bus resumes motion, or is signaled by the school
10 bus driver to proceed or the visual signals are no longer
11 actuated. Any such driver acting in violation of this
12 subsection is guilty of a misdemeanor, and, upon
13 conviction thereof, shall be fined not less than twenty-
14 five nor more than two hundred dollars, or imprisoned
15 in the county jail not more than six months, or both
16 fined and imprisoned.

17 (b) Every bus used for the transportation of school
18 children shall bear upon the front and rear thereof a
19 plainly visible sign containing the words "school bus" in
20 letters not less than eight inches in height. When a
21 contract school bus is being operated upon a highway
22 for purposes other than the actual transportation of
23 children either to or from school all markings thereon
24 indicating "school bus" shall be covered or concealed.
25 Any school bus sold or transferred to another owner by
26 a county board of education, agency or individual, shall
27 have all flashing warning lights disconnected; all
28 lettering removed or permanently obscured, except
29 when sold or transferred for the transportation of school
30 children.

31 (c) The driver of a vehicle upon a controlled access
32 highway need not stop upon meeting or passing a school
33 bus which is on a different roadway and the school bus

- 34 is stopped in a loading zone which is a part of or
35 adjacent to such highway and where pedestrians are not
36 permitted to cross the roadway.

CHAPTER 128

(H. B. 2070—By Delegate Love)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to parking privileges for disabled persons; qualifications; applications; certificate of disability by a licensed physician; and penalties for violations.

Be it enacted by the Legislature of West Virginia:

That section six, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13. STOPPING, STANDING AND PARKING.

§17C-13-6. Stopping, standing or parking privileges for disabled; qualification; application; violation.

1 (a) Any owner of a Class A motor vehicle subject to
2 registration under the provisions of article three,
3 chapter seventeen-a of this code, who is:

4 (1) A physically handicapped person with limited
5 mobility;

6 (2) A relative of a person who is a physically handi-
7 capped person with limited mobility;

8 (3) A person who regularly resides with a person who
9 is a physically handicapped person with limited mobil-
10 ity; or

11 (4) A person who regularly transports a person who
12 is a physically handicapped person with limited mobil-
13 ity, may apply for a special registration plate or a

14 mobile windshield placard by submitting to the
15 commissioner:

16 (i) An application therefor on a form prescribed and
17 furnished by the commissioner, specifying whether the
18 applicant desires a special registration plate or a mobile
19 windshield placard; and

20 (ii) A certificate issued by a person licensed to
21 practice medicine stating that the applicant or the
22 applicant's spouse or a member of the applicant's
23 immediate family residing with him is a physically
24 handicapped person with limited mobility as defined in
25 this section.

26 Upon receipt of the application, the physician's
27 certificate and the registration fee, if he finds that the
28 applicant qualifies for the special registration plate or
29 mobile windshield placard provided for in this subsection,
30 the commissioner shall issue to such applicant an
31 appropriately designed and appropriately designated
32 special registration plate or mobile windshield placard.
33 The special plate shall be used in place of a regular
34 license plate.

35 As used in this section, a physically handicapped
36 person with limited mobility is any person who suffers
37 from a permanent physical condition making it unduly
38 difficult and burdensome for such person to walk.

39 Any person who falsely or fraudulently obtains or
40 seeks to obtain the special plate or the mobile windshield
41 placard provided for in this subsection (a), and any
42 person who falsely certifies that a person is physically
43 handicapped with limited mobility in order that an
44 applicant may be issued the special plate, is guilty of
45 a misdemeanor, and, upon conviction thereof, in addition
46 to any other penalty he may otherwise incur, shall be
47 fined not less than one hundred dollars nor more than
48 one thousand dollars, or imprisoned in the county jail
49 not more than one year, or both fined and imprisoned.

50 (b) Any physically disabled person, any person who is
51 a relative of a physically disabled person, any person
52 who regularly resides with a physically disabled person,

53 or any person who regularly transports a physically
54 disabled person, may apply for a vehicle decal for a
55 Class A vehicle by submitting to the commissioner:

56 (1) An application therefor on a form prescribed and
57 furnished by the commissioner;

58 (2) A certificate issued by a person licensed to
59 practice medicine stating that the applicant or the
60 applicant's relative is a physically disabled person, or
61 that the person regularly residing with the applicant or
62 regularly transported by the applicant is a physically
63 disabled person, as defined in this section, and stating
64 the expected duration of the disability; and

65 (3) A fee of one dollar.

66 Upon receipt of the application, the physician's
67 certificate and the registration fee, if he finds that the
68 applicant qualifies for the vehicle decal provided for in
69 this subsection, the commissioner shall issue to such
70 applicant an appropriately designed decal. The decal
71 shall be displayed on the motor vehicle in the manner
72 prescribed by the commissioner and shall be valid for
73 such period of time as the certifying physician has
74 determined that the disability will continue, which
75 period of time, reflecting the date of expiration, shall be
76 conspicuously shown on the face of the decal.

77 As used in this section "physically disabled person"
78 means any person who has sustained a temporary
79 disability rendering it unduly difficult and burdensome
80 for him to walk.

81 Any person who falsely or fraudulently obtains or
82 seeks to obtain the vehicle decal provided for in this
83 subsection, and any person who falsely certifies that a
84 person is physically disabled in order that an applicant
85 may be issued the vehicle decal, is guilty of a
86 misdemeanor, and, upon conviction thereof, in addition
87 to any other penalty he may otherwise incur, shall be
88 fined not less than fifty nor more than one hundred
89 dollars, or imprisoned in the county jail not more than
90 thirty days, or both fined and imprisoned.

91 (c) Free stopping, standing or parking places marked

92 "reserved for disabled persons" shall be designated in
93 close proximity to all state, county and municipal
94 buildings and other public facilities. Such places shall
95 be reserved solely for physically disabled and handi-
96 capped persons during the hours that such buildings are
97 open for business.

98 Any person whose vehicle properly displays a valid
99 special registration plate, mobile windshield placard or
100 decal may park the vehicle for unlimited periods of time
101 in parking zones unrestricted as to length of parking
102 time permitted: *Provided*, That this privilege does not
103 mean that the vehicle may park in any zone where
104 stopping, standing or parking is prohibited or which
105 creates parking zones for special types of vehicles or
106 which prohibits parking during heavy traffic periods
107 during specified rush hours or where parking would
108 clearly present a traffic hazard. To the extent any
109 provision of any ordinance of any political subdivision
110 of this state is contrary to the provisions of this section,
111 the provisions of this section shall take precedence and
112 shall apply.

113 The privileges provided for in this subsection shall
114 apply only during those times when the vehicle is being
115 used for the transportation of a physically handicapped
116 or disabled person. Any person who knowingly
117 exercises, or attempts to exercise, such privileges at a
118 time when the vehicle is not being used for the
119 transportation of a physically handicapped or disabled
120 person is guilty of a misdemeanor, and, upon conviction
121 thereof, in addition to any other penalty he may
122 otherwise incur, shall be fined not less than ten nor more
123 than fifty dollars, or imprisoned in the county jail for
124 not more than thirty days, or both fined and imprisoned.

125 (d) No person may stop, stand or park a motor vehicle
126 in an area designated, zoned or marked for the
127 handicapped or physically disabled, when such person
128 is not physically disabled or handicapped and does not
129 have displayed upon his vehicle a distinguishing
130 insignia for the handicapped issued by the commis-
131 sioner: *Provided*, That any person in the act of transport-
132 ing a handicapped or physically disabled person, as

133 defined by this article, may stop, stand or park a motor
134 vehicle not displaying a distinguishing insignia for the
135 handicapped in an area designated, zoned or marked for
136 the handicapped or physically disabled for the limited
137 purposes of loading or unloading his handicapped or
138 physically disabled passenger: *Provided, however,* That
139 such vehicle shall be promptly moved after the comple-
140 tion of such limited purposes.

141 Any person who violates the provisions of this
142 subsection is guilty of a misdemeanor, and, upon
143 conviction thereof, shall be fined not more than twenty-
144 five dollars.

145 (e) The commissioner shall adopt and promulgate
146 rules and regulations in accordance with the provisions
147 of chapter twenty-nine-a of this code to effectuate the
148 provisions of this section.

CHAPTER 129

(H. B. 2156—By Delegate Ashcraft)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article
fifteen, chapter seventeen-c of the code of West Virginia,
one thousand nine hundred thirty-one, as amended,
relating to special restrictions on lamps used upon motor
vehicles; strobotron lights permitted on county school
board vehicles.

Be it enacted by the Legislature of West Virginia:

That section twenty-six, article fifteen, chapter seventeen-c
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, be amended and reenacted to read as
follows:

ARTICLE 15. EQUIPMENT.

§17C-15-26. Special restrictions on lamps.

- 1 (a) Any lighted lamp or illuminating device upon a
- 2 motor vehicle other than head lamps, spot lamps,

3 auxiliary lamps or flashing front-direction signals
4 which projects a beam of light of an intensity greater
5 than three hundred candlepower shall be so directed
6 that no part of the beam will strike the level of the
7 roadway on which the vehicle stands at a distance of
8 more than seventy-five feet from the vehicle.

9 (b) No person shall drive or move any vehicle or
10 equipment upon any highway with any lamp or device
11 thereon displaying other than a white or amber light
12 visible from directly in front of the center thereof except
13 as authorized by subsection (d) of this section.

14 (c) Except as authorized in section nineteen, flashing
15 lights are prohibited on motor vehicles, except on an
16 authorized emergency vehicle, school bus, snow removal
17 equipment or on any vehicle as a means for indicating
18 right or left turn, or on any vehicle as a means of
19 indicating the same is disabled or otherwise stopped for
20 an emergency.

21 (d) Notwithstanding any other provisions of this
22 chapter, the following colors of flashing warning lights
23 are restricted for the use of the type of vehicle
24 designated:

25 (1) Blue flashing warning lights are restricted to
26 police vehicles, except as authorized by section twenty-
27 seven of this article.

28 (2) Except as authorized by sections nineteen and
29 twenty-seven of this article, red flashing warning lights
30 are restricted to ambulances, fire-fighting vehicles,
31 school buses, Class A vehicles, as defined by section one,
32 article ten, chapter seventeen-a of this code, of those
33 volunteer firemen who are authorized by their fire
34 chiefs to have such lights and to Class A vehicles of
35 members of volunteer ambulance services or duly
36 chartered rescue squads who are authorized by their
37 respective chiefs to have such lights: *Provided*, That red
38 flashing warning lights attached to such Class A
39 vehicles may be operated only when responding to or
40 engaged in handling an emergency requiring the
41 attention of such volunteer firemen or members of such

42 volunteer ambulance services or chartered rescue
43 squads.

44 (3) All other emergency vehicles, including tow trucks
45 and wreckers, authorized by this chapter and by section
46 twenty-seven of this article shall be restricted to amber
47 or yellow flashing warning lights.

48 (e) Notwithstanding the foregoing provisions of this
49 section, any vehicle belonging to a county board of
50 education may be equipped with a white flashing
51 strobotron warning light. This strobe light may be
52 installed on the roof of a school bus not to exceed one-
53 third the body length forward from the rear of the roof
54 edge. The light shall have a single clear lens emitting
55 light three hundred sixty degrees around its vertical
56 axis and may not extend above the roof more than six
57 and one-half inches. A manual switch and a pilot light
58 must be included to indicate the light is in operation.

59 It shall be unlawful for flashing warning lights of an
60 unauthorized color to be installed or used on a vehicle
61 other than as specified in this section, except that a
62 police vehicle may be equipped with either or both blue
63 or red warning lights.

CHAPTER 130

(S. B. 248—By Senators Pritt and Chernenko)

[Passed April 6, 1989; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend article fifteen, chapter seventeen-c of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, by adding thereto a new section,
designated section forty-eight, relating to altered
suspension system of motor vehicles.

Be it enacted by the Legislature of West Virginia:

That article fifteen, chapter seventeen-c of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,

be amended by adding thereto a new section, designated section forty-eight, to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-48. Alteration of suspension system.

1 (a) No person may operate upon a public highway any
2 motor vehicle registered or required to be registered in
3 this state if it has been modified by alteration of its
4 altitude from the ground to the extent that its bumpers,
5 measured to any point on the lower edge of the main
6 horizontal bumper bar, exclusive of any bumper guards,
7 are not within the range of fourteen inches to twenty-
8 two inches above the ground. No vehicle may be
9 modified to cause the vehicle body or chassis to come in
10 contact with the ground, expose the fuel tank to damage
11 from collision, or cause the wheels to come in contact
12 with the body under normal operation. No part of the
13 original suspension system may be disconnected to
14 defeat the safe operation of the suspension system.
15 However, nothing contained in this section prevents the
16 installation of heavy duty equipment, including shock
17 absorbers and overload springs. Nothing contained in
18 this section prohibits the operation on a public highway
19 of a motor vehicle with normal wear to the suspension
20 system if such normal wear does not adversely affect the
21 control of the vehicle.

22 (b) No person may operate upon a public highway any
23 motor vehicle registered in this state if it has been
24 modified by alteration of its altitude from the ground
25 to the extent that its bumpers, measured to any point
26 on the lower edge of the main horizontal bumper bar,
27 exclusive of any bumper guards, do not fall within the
28 limits specified herein for its gross vehicle weight rating
29 category. The front bumper height of trucks whose gross
30 vehicle weight rating is ten thousand pounds or less,
31 may be no less than fourteen inches and no more than
32 twenty-four inches and their rear bumper height may
33 be no less than fourteen inches and no more than twenty-
34 nine inches. The provisions of this subsection do not
35 apply to trucks with a gross vehicle weight rating in
36 excess of ten thousand pounds. For the purpose of this

37 section, the term "gross vehicle weight ratings" means
38 manufacturer's gross vehicle weight ratings established
39 for that vehicle.

40 (c) In the absence of bumpers, and in cases where
41 bumper heights have been lowered or modified, height
42 measurements under subsection (a) or (b) shall be made
43 to the bottom of the frame rail.

44 (d) This section does not apply to specially designed
45 or modified motor vehicles when operated off the public
46 highways in races and similar events. Such motor
47 vehicles may be lawfully towed on the highways of this
48 state.

CHAPTER 131

(S. B. 612—By Senators Heck and Wagner)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the height and length of vehicles and loads.

Be it enacted by the Legislature of West Virginia:

That section four, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-4. Height and length of vehicles and loads.

1 (a) A vehicle including any load thereon shall not
2 exceed a height of thirteen feet six inches, but the owner
3 or owners of such vehicles shall be responsible for
4 damage to any bridge or highway structure and to
5 municipalities for any damage to traffic control devices
6 or other highway structures where such bridges, devices
7 or structures have a vehicle clearance of less than
8 thirteen feet six inches.

9 (b) A motor vehicle including any load thereon shall
10 not exceed a length of forty feet extreme overall
11 dimension, inclusive of front and rear bumpers.

12 (c) Except as hereinafter provided, a combination of
13 vehicles coupled together shall not consist of more than
14 two units, and no such combination of vehicles including
15 any load thereon shall have an overall length, inclusive
16 of front and rear bumpers, in excess of fifty-five feet,
17 except as provided in section eleven-b of this article, and
18 except as otherwise provided in respect to the use of a
19 pole trailer as authorized in section five of this article:
20 *Provided*, That the limitation that a combination of
21 vehicles coupled together shall not consist of more than
22 two units shall not apply to a combination of vehicles
23 coupled together by a saddle mount device used to
24 transport motor vehicles in a drive-away service when
25 no more than three saddle mounts are used: *Provided*,
26 *however*, That equipment used in said combination
27 meets the requirements of the safety regulations of the
28 United States department of transportation and shall
29 not exceed an overall length of more than sixty-five feet.

30 (d) The length limitations for truck tractor-semitrailer
31 combinations and truck tractor-semitrailer-trailer
32 combinations operating on the national system of
33 interstate and defense highways and those classes of
34 qualifying federal-aid primary system highways so
35 designated by the United States secretary of transpor-
36 tation, and those highways providing reasonable access
37 to and from terminals, facilities for food, fuel, repairs
38 and rest, and points of loading and unloading for
39 household goods carriers from such highways, and
40 further, as to other highways so designated by the West
41 Virginia commissioner of highways, shall be as follows:
42 The maximum length of a semitrailer unit operating in
43 a truck tractor-semitrailer combination shall not exceed
44 forty-eight feet in length, except where semitrailers
45 have an axle spacing of not more than thirty-seven feet
46 between the rear axle of the truck tractor and the front
47 axle of the semitrailer, such semitrailer shall be allowed
48 to be not more than fifty-three feet in length and the
49 maximum length of any semitrailer or trailer operating

50 in a truck tractor-semitrailer-trailer combination shall
51 not exceed twenty-eight and one-half feet in length and
52 in no event shall any combinations exceed three units,
53 including the truck tractor: *Provided*, That nothing
54 herein contained shall impose an overall length limita-
55 tion as to commercial motor vehicles operating in truck
56 tractor-semitrailer or truck tractor-semitrailer-trailer
57 combinations.

CHAPTER 132

(Com. Sub. for H. B. 2050—By Delegate Bradley)

[Passed April 8, 1989; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact sections one, two, four and five, article six, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal annexation; annexation by a majority of qualified voters and freeholders without an election; petition for annexation; and annexation by minor boundary adjustment.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four and five, article six, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. ANNEXATION.

- §8-6-1. Annexation of unincorporated territory.
- §8-6-2. Petition for annexation.
- §8-6-4. Annexation without an election.
- §8-6-5. Annexation by minor boundary adjustment.

PART I. GENERAL.

§8-6-1. Annexation of unincorporated territory.

- 1 Unincorporated territory may be annexed to and
- 2 become part of a municipality contiguous thereto only
- 3 in accordance with the provisions of this article.

4 Any farmlands or operations as described in article
5 nineteen, chapter nineteen of this code which may be
6 annexed into a municipality shall be protected in the
7 continuation of agricultural use after being annexed.

PART II. ANNEXATION BY ELECTION.

§8-6-2. Petition for annexation.

1 Five percent or more of the freeholders of a munic-
2 ipality desiring to have territory annexed thereto may
3 file their petition in writing with the governing body
4 thereof, setting forth the change proposed in the metes
5 and bounds of the municipality, and asking that a vote
6 be taken upon the proposed change. Such petition shall
7 be verified and shall be accompanied by an accurate
8 survey map showing the territory which would be
9 annexed to the corporate limits by the proposed change.
10 The governing body, upon bond in penalty prescribed by
11 the governing body with good and sufficient surety
12 being given by petitioners, and conditioned to pay the
13 costs of such election if a majority of the legal votes cast
14 are against the proposed change in boundary, shall
15 thereupon order a vote of the qualified voters of such
16 municipality to be taken upon the proposed change on
17 a date and at a time and place therein to be named in
18 the order, not less than twenty nor more than thirty days
19 from the date thereof. The governing body shall, at the
20 same time, order a vote of all of the qualified voters of
21 the additional territory, and of all of the freeholders of
22 such additional territory, whether they reside or have
23 a place of business therein or not, to be taken upon the
24 question on the same day, at some convenient place in
25 or near such additional territory: *Provided*, That the
26 additional territory to be included shall conform to the
27 requirements of section one, article two of this chapter,
28 and the determination that the additional territory does
29 so conform shall be reviewable by the circuit court of
30 the county in which the municipality or the major
31 portion of the territory thereof, including the area
32 proposed to be annexed, is located upon certiorari to the
33 governing body, in accordance with the provisions of
34 article three, chapter fifty-three of this code. The
35 governing body shall cause the order to be published,

36 at the cost of the municipality, as a Class II-0 legal
37 advertisement in compliance with the provisions of
38 article three, chapter fifty-nine of this code, and the
39 publication area for such publication shall be the
40 municipality and the additional territory. The first
41 publication must be at least fourteen days prior to the
42 date upon which the vote is to be taken. The order so
43 published shall contain an accurate description by metes
44 and bounds of the additional territory proposed to be
45 annexed to the corporate limits by the proposed change,
46 and, if practicable, shall also contain a popular descrip-
47 tion of such additional territory.

48 The election shall be held, superintended and con-
49 ducted, and the results thereof ascertained, certified,
50 returned and canvassed in the same manner and by the
51 same individuals as elections for municipal officers. The
52 ballots, or ballot labels where voting machines are used,
53 shall have written or printed on them the words:

54 ☐ For Annexation

55 ☐ Against Annexation

56 Any freeholder which is a firm or corporation may
57 vote by its manager, president, or executive officer duly
58 designated in writing by such firm or corporation. Even
59 though an individual who is a qualified voter of the
60 municipality or the territory is also a freeholder of the
61 territory, such person shall be entitled to vote only once.

62 When an election is held in any municipality in
63 accordance with the provisions of this section, another
64 such election relating to the same proposed change or
65 any part thereof shall not be held for a period of one
66 year.

67 If a majority of all of the legal votes cast both in the
68 municipality and in the territory are in favor of the
69 proposed annexation, then the governing body shall
70 proceed as specified in the immediately succeeding
71 section of this article.

PART III. ANNEXATION WITHOUT ELECTION.

§8-6-4. Annexation without an election.

1 The governing body of a municipality may by ordi-
2 nance provide for the annexation of additional territory
3 without ordering a vote on the question if (1) a majority
4 of the qualified voters of such additional territory file
5 with the governing body their petition to be annexed,
6 and (2) a majority of all freeholders of such additional
7 territory, whether they reside or have a place of business
8 therein or not, file with the governing body their
9 petition to be annexed: *Provided*, That the additional
10 territory shall conform to the requirements of section
11 one, article two of this chapter, and the determination
12 that the additional territory does so conform or that the
13 requisite number of petitioners have filed the required
14 petitions shall be reviewable by the circuit court of the
15 county in which the municipality or the major portion
16 of the territory thereof, including the area proposed to
17 be annexed, is located upon certiorari to the governing
18 body, in accordance with the provisions of article three,
19 chapter fifty-three of this code. A qualified voter of the
20 additional territory who is also a freeholder of the
21 additional territory may join only in the voters' petition
22 of such additional territory. It shall be the responsibility
23 of the governing body to enumerate and verify the total
24 number of eligible petitioners, in each category, from
25 the additional territory. In determining the total
26 number of eligible petitioners, in each category, a
27 freeholder or any other entity that is a freeholder shall
28 be limited to one vote or one signature on a petition as
29 provided in this section. There shall be allowed only one
30 signature on a petition per parcel of property and any
31 freehold interest that is held by more than one individ-
32 ual or entity shall be allowed to sign a petition only upon
33 the approval by the majority of the individuals or
34 entities that have an interest in the parcel of property.
35 A qualified voter of the additional territory who is also
36 a freeholder of the additional territory shall be counted
37 only as a freeholder and if all of the eligible petitioners
38 are qualified voters, then only a voters' petition shall be
39 required. If satisfied that the additional territory
40 conforms to the requirements of section one, article two
41 of this chapter and that the petition is sufficient in every
42 respect, the governing body shall enter such fact upon

43 its journal and forward a certificate to that effect to the
44 county commission of the county wherein the municipal-
45 ity or the major portion of the territory thereof,
46 including the additional territory, is located. The county
47 commission shall thereupon enter an order along the
48 lines of the order described in the immediately preced-
49 ing section of this article. After the date of such order,
50 the corporate limits of the municipality shall be as set
51 forth therein.

PART IV. ANNEXATION BY MINOR BOUNDARY ADJUSTMENT.

§8-6-5. Annexation by minor boundary adjustment.

1 In the event a municipality desires to increase its
2 corporate limits by making a minor boundary adjust-
3 ment, the governing body of such municipality may
4 apply to the county commission of the county wherein
5 the municipality or the major portion of the territory
6 thereof, including the territory to be annexed, is located
7 for permission to effect such annexation by minor
8 boundary adjustment.

9 Such application shall disclose the number of persons
10 residing in the territory to be annexed to the corporate
11 limits by the proposed change, and shall have attached
12 thereto an accurate map showing the metes and bounds
13 of such additional territory.

14 If satisfied that the proposed annexation is only a
15 minor boundary adjustment, the county commission
16 shall order publication of a notice of the proposed
17 annexation to the corporate limits and of the date and
18 time set by the commission for a hearing on such
19 proposal. Publication shall be as in the case of an order
20 calling for an election, as set forth in section two of this
21 article. A like notice shall be prominently posted at not
22 less than five public places within the area proposed to
23 be annexed.

24 If the freeholders of the area proposed to be annexed
25 who are present or are represented at the hearing are
26 not substantially opposed to the proposed boundary
27 change, the commission may enter an order changing
28 the corporate limits of the municipality as requested,

29 which order may be reviewed by the circuit court as an
30 order of a county commission ordering an election may
31 be reviewed under section sixteen, article five of this
32 chapter. After the date of such order, the corporate
33 limits of the municipality shall be as set forth therein,
34 unless judicial review is sought under the provisions of
35 said section sixteen. If the proposed change is substan-
36 tially opposed at the hearing by any such freeholder, the
37 commission shall dismiss the application. Dismissal of
38 any such application shall not preclude proceedings in
39 accordance with the provisions of sections two and three
40 or section four of this article. The municipality shall pay
41 the costs of all proceedings under this section.

CHAPTER 133

(Com. Sub. for S. B. 169—By Senator J. Manchin)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article eighteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty-three; to amend article nineteen of said chapter eight by adding thereto a new section, designated section twelve-a; to amend and reenact section ten, article twenty of said chapter; and to amend and reenact section three, article thirteen, chapter sixteen of said code, all relating to municipal sewer, water and electric power facilities; authority to require connection to sewers; authority to require discontinuance of water service by provider other than municipality where only sewer service is provided by municipality and user is delinquent in payment for service rates and charges; notice of delinquency; lien for delinquent sewer, water and electric power service rates and charges; failure of user to cure delinquency; suits to collect delinquent charges; deferral of filing fees and costs of magistrate court action for delinquent rates and charges; and limitation on foreclosure of liens; powers

of sanitary board; contract; employees; compensation thereof; extension and improvements; replacement of damaged public works.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article eighteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-three; that article nineteen of said chapter eight be amended by adding thereto a new section, designated section twelve-a; that section ten, article twenty of said chapter be amended and reenacted; and that section three, article thirteen, chapter sixteen of said code be amended and reenacted, all to read as follows:

Chapter

8. Municipal Corporations.

16. Public Health.

CHAPTER 8. MUNICIPAL CORPORATIONS.

Article

18. Assessments to Improve Streets, Sidewalks and Sewers; Sewer Connections and Board of Health; Enforcement of Duty to Pay for Service.

19. Municipal Waterworks and Electric Power Systems.

20. Combined Waterworks and Sewerage Systems.

ARTICLE 18. ASSESSMENTS TO IMPROVE STREETS, SIDEWALKS AND SEWERS; SEWER CONNECTIONS AND BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE.

§8-18-22. Connection to sewers; board of health; penalty.

§8-18-23. Authority to require discontinuance of water service by provider utility for nonpayment of sewer service rates and charges; notice of delinquency; lien for delinquent service rates and charges; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

PART XII. CONNECTION TO SEWERS; BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE.

§8-18-22. Connection to sewers; board of health; penalty.

- 1 The owner or owners of any lot or parcel of land
- 2 abutting on any street, alley, public way or easement in

3 any municipality on which a public sewer is now located
4 or may hereafter be constructed and laid (whether
5 constructed and laid under the provisions of this article
6 or any other provisions of law) upon which lot or parcel
7 of land any business or residence building is now located
8 or may hereafter be erected, not connected with a public
9 sewer, may be required and compelled by the municipi-
10 pality or by the board of health to connect any such
11 building with such sewer. Notice so to connect shall be
12 given by the municipality or by the board of health to
13 the owner and to the lessee or occupant of such building.
14 Each day's failure to comply with such notice and
15 connect with such sewer by such owner or owners, after
16 thirty days from the receipt of such notice, shall be a
17 misdemeanor and a separate and new offense under this
18 section, and each such offense shall be punishable by a
19 fine of not less than five nor more than twenty-five
20 dollars. Jurisdiction to hear, try, determine and sentence
21 for any violation of this section is hereby vested in the
22 police or municipal court thereof, or, where no police
23 court exists, in the mayor thereof.

**§8-18-23. Authority to require discontinuance of water
service by provider utility for nonpayment
of sewer service rates and charges; notice of
delinquency; lien for delinquent service
rates and charges; failure to cure delin-
quency; civil actions; deferral of filing fees
and costs in magistrate court action;
limitations with respect to foreclosure.**

1 (a) When any municipality owns, maintains, operates
2 or provides sewer facilities to its residents and custo-
3 mers and does not own, maintain, operate or provide
4 water facilities to them when the same is provided by
5 any other publicly or privately owned utility, municipal-
6 ity or public service district, the municipality providing
7 sewer facilities may require the provider of water
8 facilities to discontinue water service to any of its users
9 who are delinquent in the payment of sewer service
10 rates and charges to the municipality. The provider of
11 water facilities is empowered and authorized hereby to
12 discontinue water service upon demand of the municipi-

13 pality for this purpose; however, prior to discontinuance
14 of any water service, the municipality shall contract
15 with the provider of water facilities which contract shall
16 provide that the municipality shall reimburse the
17 provider of water facilities for all costs and expenses
18 incurred in both the termination of water service to the
19 delinquent user of sewer facilities and the subsequent
20 resumption of water service to such user. The contract
21 shall provide for reasonable methods and assurances so
22 that the provider of water facilities will be protected
23 and held harmless from claims and damages when
24 water service is discontinued in error or in violation of
25 the rights of the user through the fault of the munic-
26 ipality providing sewer facilities and making the
27 demand for discontinuance of water service to the user
28 of such sewer facilities. Any contract made for this
29 purpose shall have the approval of the public service
30 commission prior to its execution and performance. Any
31 disconnection of water service must comply with all
32 rules, regulations and orders of the public service
33 commission.

34 (b) Whenever any rates and charges for services or
35 facilities furnished remain unpaid for a period of thirty
36 days after the same become due and payable, the
37 property and the owner thereof, as well as the user of
38 the services and facilities provided shall be delinquent
39 and the owner, user and property shall be held liable
40 at law until such time as all such rates and charges are
41 fully paid: *Provided*, That in the event the user is a
42 tenant, the property owner shall be given notice of any
43 said delinquency by certified mail, return receipt
44 requested, and the user shall be given such notice by
45 first-class mail: *Provided, however*, That failure of the
46 user to cure the delinquency within a thirty-day period
47 after receipt of such notice shall constitute grounds to
48 terminate the user's lease of the premises concerned.

49 (c) All rates and charges whenever delinquent, as
50 provided by ordinance of the municipality, shall be liens
51 of equal dignity, rank and priority with the lien on such
52 premises of state, county, school and municipal taxes for
53 the amount thereof upon the real property served, and

54 the municipality shall have plenary power and authority
55 from time to time to enforce such lien in a civil action
56 to recover the money due for such services rendered plus
57 court fees and costs and a reasonable attorney's fee:
58 *Provided, That a municipality shall have exhausted all*
59 *remedies available in magistrate courts against such*
60 *delinquent users before it may proceed in a civil action*
61 *against the owner.*

62 (d) Municipalities are hereby granted a deferral of
63 filing fees or other fees and costs incidental to the
64 bringing and maintenance of an action in magistrate
65 court for the collection of the delinquent rates and
66 charges. If the municipality collects the delinquent
67 account, plus fees and costs, from its customer or other
68 responsible party, the municipality shall pay to the
69 magistrate court the filing fees or other fees and costs
70 which were previously deferred.

71 (e) No municipality may foreclose upon the premises
72 served by it for delinquent rates and charges for which
73 a lien is authorized by this section except through the
74 bringing and maintenance of a civil action for such
75 purpose brought in the circuit court of the county
76 wherein the municipality lies. In every such action, the
77 court shall be required to make a finding based upon
78 the evidence and facts presented that the municipality
79 had exhausted all other remedies for the collection of
80 debts with respect to such delinquencies prior to the
81 bringing of such action. In no event shall foreclosure
82 procedures be instituted by any municipality or on its
83 behalf unless such delinquency has been in existence or
84 continued for a period of two years from the date of the
85 first such delinquency for which foreclosure is being
86 instituted.

ARTICLE 19. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS.

**§8-19-12a. Lien for delinquent service rates and charges;
notice of delinquency; failure to cure
delinquency; civil actions; deferral of filing
fees and costs in magistrate court action;
limitations with respect to foreclosure.**

1 (a) Whenever any rates and charges for water servi-
2 ces or facilities furnished remain unpaid for a period of
3 thirty days after the same become due and payable, the
4 property and the owner thereof, as well as the user of
5 the services and facilities provided shall be delinquent
6 and the owner, user and property shall be held liable
7 at law until such time as all such rates and charges are
8 fully paid: *Provided*, That in the event the user is a
9 tenant, the property owner shall be given notice of any
10 said delinquency by certified mail, return receipt
11 requested, and the user shall be given such notice by
12 first-class mail: *Provided, however*, That failure of the
13 user to cure the delinquency within a thirty-day period
14 after receipt of such notice shall constitute grounds to
15 terminate the user's lease of the premises concerned.

16 (b) All rates or charges for water service whenever
17 delinquent, as provided by ordinance of the municipal-
18 ity, shall be liens of equal dignity, rank and priority
19 with the lien on such premises of state, county, school
20 and municipal taxes for the amount thereof upon the
21 real property served, and the municipality shall have
22 plenary power and authority from time to time to
23 enforce such lien in a civil action to recover the money
24 due for such services rendered plus court fees and costs
25 and a reasonable attorney's fee: *Provided*, That a
26 municipality shall have exhausted all remedies available
27 against such delinquent users before it may proceed in
28 a civil action against the owner.

29 (c) Municipalities are hereby granted a deferral of
30 filing fees or other fees and costs incidental to the
31 bringing and maintenance of an action in magistrate
32 court for the collection of the delinquent rates and
33 charges. If the municipality collects the delinquent
34 account, plus fees and costs, from its customer or other
35 responsible party, the municipality shall pay to the
36 magistrate court the filing fees or other fees and costs
37 which were previously deferred.

38 (d) No municipality may foreclose upon the premises
39 served by it for delinquent rates or charges for which
40 a lien is authorized by this section except through the
41 bringing and maintenance of a civil action for such

42 purpose brought in the circuit court of the county
43 wherein the municipality lies. In every such action, the
44 court shall be required to make a finding based upon
45 the evidence and facts presented that the municipality
46 had exhausted all other remedies for the collection of
47 debts with respect to such delinquencies prior to the
48 bringing of such action. In no event shall foreclosure
49 procedures be instituted by any municipality or on its
50 behalf unless such delinquency had been in existence or
51 continued for a period of two years from the date of the
52 first such delinquency for which foreclosure is being
53 sought.

**ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE
SYSTEMS.**

**§8-20-10. Power and authority of municipality to enact
ordinances and make rules and regulations
and fix rates or charges; change in rates or
charges; notice of delinquency; failure to
cure delinquency; delinquent rates or
charges as liens; civil action for recovery
thereof; deferral of filing fees and costs in
magistrate court action; limitations with
respect to foreclosure.**

1 (a) The governing body of any municipality availing
2 itself of the provisions of this article shall have plenary
3 power and authority to make, enact and enforce all
4 needful rules and regulations for the repair, mainte-
5 nance and operation and management of the combined
6 waterworks and sewerage system of such municipality
7 and for the use thereof, and shall also have plenary
8 power and authority to make, enact and enforce all
9 needful rules and regulations and ordinances for the
10 care and protection of any such system, which may be
11 conducive to the preservation of the public health,
12 comfort and convenience and to rendering the water
13 supply of such municipality pure and the sewerage
14 harmless insofar as it is reasonably possible so to do, and
15 any such municipality shall have plenary power and
16 authority to charge the users for the use and service of
17 such combined waterworks and sewerage system and to
18 establish rates or charges for such purpose. Separate

19 rates or charges may be fixed for the water and sewer
20 services respectively or combined rates or charges for
21 the combined water and sewer services. Such rates or
22 charges, whether separate or combined, shall be
23 sufficient at all times to pay the cost of repair,
24 maintenance and operation of the combined waterworks
25 and sewerage system, provide an adequate reserve fund
26 and adequate depreciation fund and pay the principal
27 of and interest upon all revenue bonds issued under this
28 article. Rates or charges shall be established, revised
29 and maintained by ordinance and become payable as the
30 governing body may determine by ordinance, and such
31 rates or charges shall be changed from time to time as
32 needful, consistent with the provisions of this article.

33 (b) Whenever any rates and charges for services or
34 facilities furnished remain unpaid for a period of thirty
35 days after the same become due and payable, the
36 property and the owner thereof, as well as the user of
37 the services and facilities provided shall be delinquent
38 and the owner, user and property shall be held liable
39 at law until such time as all such rates and charges are
40 fully paid: *Provided*, That in the event the user is a
41 tenant, the property owner shall be given notice of any
42 said delinquency by certified mail, return receipt
43 requested, and the user shall be given such notice by
44 first-class mail: *Provided, however*, That failure of the
45 user to cure the delinquency within a thirty-day period
46 after receipt of such notice shall constitute grounds to
47 terminate user's lease of the premises concerned.

48 (c) All rates or charges for water service and sewer
49 service whenever delinquent, as provided by ordinance
50 of the municipality, shall be liens of equal dignity, rank
51 and priority with the lien on such premises of state,
52 county, school and municipal taxes for the amount
53 thereof upon the real property served, and the munic-
54 ipality shall have plenary power and authority from
55 time to time to enforce such lien in a civil action to
56 recover the money due for such services rendered plus
57 court fees and costs and a reasonable attorney's fee:
58 *Provided*, That a municipality shall have exhausted all
59 remedies available in magistrate courts against such

60 delinquent users before it may proceed in a civil action
61 against the owner.

62 (d) Municipalities are hereby granted a deferral of
63 filing fees or other fees and costs incidental to the
64 bringing and maintenance of an action in magistrate
65 court for the collection of the delinquent rates and
66 charges. If the municipality collects the delinquent
67 account, plus fees and costs, from its customer or other
68 responsible party, the municipality shall pay to the
69 magistrate court the filing fees or other fees and costs
70 which were previously deferred.

71 (e) No municipality may foreclose upon the premises
72 served by it for delinquent rates, fees or charges for
73 which a lien is authorized by this section except through
74 the bringing and maintenance of a civil action for such
75 purpose brought in the circuit court of the county
76 wherein the municipality lies. In every such action, the
77 court shall be required to make a finding based upon
78 the evidence and facts presented that the municipality
79 had exhausted all other remedies for the collection of
80 debts with respect to such delinquencies prior to the
81 bringing of such action. In no event shall foreclosure
82 procedures be instituted by any municipality or on its
83 behalf unless such delinquency had been in existence or
84 continued for a period of two years from the date of the
85 first such delinquency for which foreclosure is being
86 sought.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

§16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and im- provements; replacement of damaged public works.

1 The board shall have power to take all steps and
2 proceedings and to make and enter into all contracts or
3 agreements necessary or incidental to the performance
4 of its duties and the execution of its powers under this
5 article: *Provided*, That any contract relating to the

6 financing of the acquisition or construction of any such
7 works, or any trust indenture as hereinafter provided
8 for, shall be approved by the governing body of such
9 municipality before the same shall be effective. The
10 board may employ engineers, architects, inspectors,
11 superintendents, managers, collectors, attorneys, and
12 such other employees as in its judgment may be
13 necessary in the execution of its powers and duties, and
14 may fix their compensation, all of whom shall do such
15 work as the board shall direct. All such compensation
16 and all expenses incurred in carrying out the provisions
17 of this article shall be paid solely from funds provided
18 under the authority of this article, and the board shall
19 not exercise or carry out any authority or power herein
20 given it so as to bind said board of said municipality
21 beyond the extent to which money shall have been or
22 may be provided under the authority of this article. No
23 contract or agreement with any contractor or contrac-
24 tors for labor and/or material, exceeding in amount the
25 sum of five thousand dollars, shall be made without
26 advertising for bids, which bids shall be publicly opened
27 and award made to the best bidder, with power in the
28 board to reject any or all bids. After the construction,
29 installation, and completion of the works, or the
30 acquisition thereof, the board shall operate, manage and
31 control the same and may order and complete any
32 extensions, betterments and improvements of and to the
33 works that the board may deem expedient, if funds
34 therefor be available or are made available as provided
35 in this article, and shall establish rules and regulations
36 for the use and operation of the works, and of other
37 sewers and drains connected therewith so far as they
38 may affect the operation of such works, and do all things
39 necessary or expedient for the successful operation
40 thereof. The sanitary board may declare an emergency
41 situation in the event of collector line breaks or vital
42 treatment plant equipment failure and shall be exemp-
43 ted from competitive bidding requirements and enter
44 into direct purchase agreements or contracts for such
45 expenses. All public ways or public works damaged or
46 destroyed by the board in carrying out its authority
47 under this article shall be restored or repaired by the

- 48 board and placed in their original condition, as nearly
49 as practicable, if requested so to do by proper authority,
50 out of the funds provided by this article.

CHAPTER 134

(H. B. 2689—By Delegate Ryan)

[Passed April 5, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article thirty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enhancing ability of municipal and county hospitals to borrow money for hospital purposes.

Be it enacted by the Legislature of West Virginia:

That section four, article thirty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 32. INTERGOVERNMENTAL RELATIONS-CONTRIBUTIONS TO OR INVOLVEMENT WITH NONSTOCK, NONPROFIT CORPORATIONS OR HEALTH INSTITUTIONS FOR PUBLIC PURPOSES.

PART IV. HEALTH INSTITUTIONS.

§8-32-4. **Legislative findings; authority of municipalities and county commissions to make appropriations; limitations and restrictions.**

- 1 (a) The Legislature hereby finds that the support of
2 public or nonprofit health institutions dedicated to
3 making available to the general public health and
4 mental health services is for the general welfare of the
5 public and is a public purpose for which funds of a
6 municipality or county commission may be lawfully
7 expended. This section is enacted in view of this finding
8 and shall be liberally construed in the light thereof. As
9 used in this section, the term "health institution" means
10 a hospital, health or mental health clinic, regional or
11 community health or mental health center, mental
12 retardation facility, extended care facility, nursing

13 home, or other health or mental health institution, which
14 is open to the general public.

15 (b) Notwithstanding any statutory or charter provi-
16 sion to the contrary, municipalities and county commis-
17 sions are hereby empowered and authorized to approp-
18 riate funds, subject to the conditions and limitations set
19 forth in this section, for the establishment, cost,
20 operation, maintenance and projects of any health
21 institution, whether such health institution be situate
22 within or without the confines of any such municipality
23 or county. Funds may not be appropriated by a
24 municipality or county commission for the benefit and
25 use of any health institution unless such health institu-
26 tion is either owned and operated by a unit of govern-
27 ment, or is owned and operated by a nonstock, nonprofit
28 corporation chartered under the laws of or licensed to
29 do business in this state which provides in its charter
30 that no member trustee or member of the board of
31 directors (by whatever name the same may be called)
32 shall receive any compensation, gain or profit from such
33 corporation and which is operated in compliance with
34 such charter provisions. Any such appropriation shall be
35 made from the general funds of such municipality or
36 county commission not otherwise appropriated or from
37 federal revenue sharing funds received by such munic-
38 ipality or county commission.

39 (c) The recipient of any funds appropriated under the
40 provisions of this section shall upon demand at any time
41 make a full and complete accounting of all such funds
42 to the governing body of the municipality or county
43 commission which made such appropriation and shall in
44 every event without demand make to such governing
45 body an annual accounting thereof.

46 (d) Under no circumstances whatever shall any action
47 taken by any municipality or county commission under
48 the authority of this section give rise to or create any
49 indebtedness on the part of the municipality, the county,
50 the governing body of such municipality, the county
51 commission, any member of such governing body or
52 county commission or any municipal or county official
53 or employee.

54 (e) No provision within this article prohibits the
55 ability of a county or municipal hospital to borrow
56 money and to perform such actions and do those things
57 which are reasonably necessary to effectuate the
58 purposes of this section, including, but not limited to,
59 obtaining credit to further the mission of such hospital
60 and acceptance of a loan for working capital require-
61 ments, as that term is generally defined: *Provided, That*
62 the hospital complies with the provisions of subsection
63 (d) of this section so that any indebtedness created is at
64 no time an obligation of any municipality, the county
65 commission, any member of such governing body or
66 county commission or any municipal or county official
67 or employee.

CHAPTER 135

(Com. Sub. for H. B. 2241—By Delegate S. Cook)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section fifteen, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend said chapter by adding thereto a new article, designated article one-a, all relating to the public land corporation of West Virginia; altering membership, establishing powers and duties, criteria for public land disposal; creating a special public land corporation fund and uses of fund moneys; license and permit issuance authority of corporation; requiring state agencies, with exception of department of highways, to prepare and submit inventories of all public land held or under control of such agencies; public bidding procedures and land appraisal requirements; and requiring public hearings by the corporation for the sale, exchange or transfer of public land.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, be repealed; that said chapter be amended by adding thereto a new article, designated article one-a, to read as follows:

ARTICLE 1A. REAL ESTATE MANAGEMENT AND PROCEDURES.

§20-1A-1. Public land corporation.

§20-1A-2. Corporation boards of directors, members, expenses, appointment, terms, qualifications; director as board chairman; meetings, quorum; executive secretary, secretary to board; professional and support staff; execution of legal documents, permits and licenses.

§20-1A-3. Public land corporation, powers and duties.

§20-1A-4. Public land corporation to conduct sales of public lands by competitive bidding, modified competitive bidding or direct sale.

§20-1A-5. Public land corporation to hold public hearing before sale, exchange or transfer of land.

§20-1A-6. Competitive bidding and notice requirements before the development of natural resources on certain lands.

§20-1A-7. Adopt a state park or forest program.

§20-1A-1. Public land corporation.

1 (a) The public land corporation, heretofore created
2 and established as an activity of the department of
3 natural resources, is hereby continued and established
4 within and as a unit of the department of natural
5 resources. The personal property and employees of the
6 public land corporation are hereby transferred to the
7 department of natural resources: *Provided*, That the
8 employees so transferred shall continue to have merit
9 system status or are hereby vested with such merit
10 system status if not previously included therein.

11 (b) The corporation shall be a public benefit corpora-
12 tion and an instrumentality of the state and may sue or
13 be sued, contract and be contracted with, plead and be
14 impleaded, have and use a common seal.

15 (c) The corporation shall be vested with the title of the
16 state of West Virginia in public lands, the title to which
17 now is or may hereafter become vested in the state of
18 West Virginia by reason of any law governing the title
19 of lands of the state: *Provided*, That those lands for
20 which title is specifically vested by law in other state
21 agencies, institutions and departments shall continue to

22 be vested in such state agencies, institutions and
23 departments.

§20-1A-2. Corporation boards of directors, members, expenses, appointment, terms, qualifications; director as board chairman; meetings, quorum; executive secretary, secretary to board; professional and support staff; execution of legal documents, permits and licenses.

1 (a) The public land corporation shall be governed by
2 a board of directors comprised of five members of which
3 three shall be ex officio and two shall be appointed by
4 the governor. The members of the board shall receive
5 no compensation for their service thereon. The board
6 members who are not ex officio shall be reimbursed by
7 the director for their actual and necessary expenses
8 incurred pursuant to their duties under this article from
9 funds authorized for such purposes.

10 (b) The director of the department of natural resour-
11 ces shall be an ex officio member and chairman of the
12 board of directors. The commissioner of the department
13 of culture and history and the commissioner of the
14 department of commerce, or their designees who shall
15 be employees of their respective departments, shall be
16 ex officio members of the board of directors.

17 (c) The governor shall appoint two members of the
18 board of directors, with the advice and consent of the
19 Senate, which members shall serve a term of four years:
20 *Provided*, That the initial appointments shall be to terms
21 of two and four years, respectively, which terms shall
22 commence on the first day of July, one thousand nine
23 hundred eighty-nine. The members of the board of
24 directors appointed by the governor shall be persons
25 with a demonstrated interest and knowledge in the
26 conservation and protection of the aesthetic, biological,
27 geological, historical, archeological, cultural or recrea-
28 tional values of the public lands of the state.

29 (d) A majority of the board of directors shall consti-
30 tute a quorum for the transaction of business. The board
31 shall meet at such times and places as it may determine

32 and shall meet on call of the chairman. It shall be the
33 duty of the chairman to call a meeting of the board on
34 the written request of any three members thereof.

35 (e) The director shall appoint and supervise an
36 executive secretary of the public land corporation, and
37 may employ other necessary professional and support
38 staff for the purposes of this article, who shall be
39 employees of the department with merit system status.

40 An affirmative vote of a majority of the members of
41 the corporation is required for any action of the
42 corporation with respect to the sale or exchange of
43 public lands or for the issuance of a lease or contract
44 for the development of minerals, oil or gas. All actions
45 must be taken at a scheduled meeting of the corporation
46 held in compliance with the provisions of article nine-
47 a, chapter six of this code.

48 The powers and duties of the corporation are nonde-
49 legable, except that the executive secretary may
50 negotiate and enter into preliminary agreements on
51 behalf of the corporation, and shall, upon authorization
52 of the corporation, be entitled to engage in valid actions
53 of the corporation in respect of day-to-day administra-
54 tive activities. An agreement entered into by the
55 executive secretary on behalf of the corporation is not
56 valid until such agreement is approved by an affirma-
57 tive vote of a majority of the corporation.

§20-1A-3. Public land corporation, powers and duties.

1 The corporation is hereby authorized and empowered
2 to:

3 (1) Acquire from any persons or the state auditor or
4 any local, state or federal agency, by purchase, lease or
5 other agreement, any lands necessary and required for
6 public use;

7 (2) Acquire by purchase, condemnation, lease or
8 agreement, receive by gifts and devises, or exchange,
9 rights-of-way, easements, waters and minerals suitable
10 for public use;

11 (3) Sell or exchange public lands where it is deter-

12 mined that the sale or exchange of such tract meets any
13 or all of the following disposal criteria:

14 (A) Such tract was acquired for a specific purpose
15 and the tract is no longer required for that or any other
16 state purpose; or

17 (B) Disposal of such tract serves important public
18 objectives including, but not limited to, expansion of
19 communities and economic development which cannot
20 be achieved on lands other than public lands and which
21 clearly outweigh other public objectives and values
22 including, but not limited to, recreation and scenic
23 values which would be served by maintaining such tract
24 in state ownership; or

25 (C) Such tract, because of its location or other
26 characteristics, is difficult and uneconomic to manage
27 as part of the public lands and is not suitable for
28 management by another state department or agency.

29 There is hereby created in the state treasury a special
30 public land corporation fund into which shall be paid
31 all proceeds from public land sales and exchanges. The
32 corporation may acquire public lands from use of the
33 payments made to the fund, along with any interest
34 accruing to said fund. The corporation shall report
35 annually, just prior to the beginning of the regular
36 session of the Legislature, to the finance committees of
37 the Legislature on the financial condition of the special
38 fund.

39 (4) Sell, purchase or exchange lands or stumpage for
40 the purpose of consolidating lands under state or federal
41 government administration subject to the disposal
42 criteria specified in subdivision three of this section;

43 (5) Negotiate and effect loans or grants from the
44 government of the United States or any agency thereof
45 for acquisition and development of such lands as may
46 be authorized by law to be acquired for public use;

47 (6) Expend the income from the use and development
48 of public lands for the following purposes:

49 (A) Liquidate obligations incurred in the acquisition,

50 development and administration of such lands, until all
51 such obligations have been fully discharged;

52 (B) Purchase, develop, restore and preserve for public
53 use, sites, structures, objects and documents of prehis-
54 toric, historical, archaeological, recreational, architectu-
55 ral and cultural significance to the state of West
56 Virginia; and

57 (C) Obtain grants or matching moneys available from
58 the government of the United States or any of its
59 instrumentalities for prehistoric, historic, archaeologi-
60 cal, recreational, architectural and cultural purposes;

61 The corporation shall have the authority to designate
62 lands to which it has title for development and admin-
63 istration for the public use including recreation, wildlife
64 stock grazing, agricultural rehabilitation and home-
65 steading or other conservation activities. The corpora-
66 tion shall have authority to enter into leases for the
67 development and extraction of minerals, including sand
68 and gravel, except as otherwise circumscribed herein.
69 The corporation shall reserve title and ownership to the
70 mineral rights in all cases. It shall convey, assign, or
71 allot lands to the title or custody of proper departments
72 or other agencies of state government for administration
73 and control within the functions of such departments or
74 other agencies as provided by law. The corporation shall
75 make proper lands available for the purpose of cooper-
76 ating with the government of the United States in the
77 relief of unemployment and hardship or for any other
78 public purpose. The corporation shall report annually to
79 the Legislature on its public land holdings, its financial
80 condition and its operations and shall make such
81 recommendations to the Legislature as deemed proper
82 concerning the acquisition, development, disposition and
83 use of public lands. All state agencies, institutions and
84 departments shall make an inventory of the public lands
85 of the state as may be by law specifically allocated to
86 and used by each and provide to the corporation a list
87 of such public lands, including their current use,
88 intended use or best use to which such land may be put:
89 *Provided*, That the state department of highways need
90 not provide such inventory of public lands allocated to

91 and used by it. The inventory shall identify those parcels
92 of land which have no present or foreseeable useful
93 purpose to the state of West Virginia. The inventory
94 shall be submitted to the corporation by the first day
95 of August, one thousand nine hundred eighty-nine. The
96 corporation shall compile such inventory of all public
97 lands and report to the Legislature by no later than the
98 first day of January, one thousand nine hundred ninety,
99 on its public land holdings and the land holdings of the
100 other agencies or departments of this state which are
101 required to report their holdings to the corporation as
102 set forth hereinabove, its financial condition and its
103 operations.

104 During the continuance of the Blennerhassett histor-
105 ical park commission, the public land corporation and
106 its members shall consult with and keep the said
107 Blennerhassett historical park commission fully in-
108 formed as to any official action to be taken or proposed
109 to be taken pursuant to this act regarding or affecting
110 Blennerhassett Island and its prehistoric, historic,
111 archaeological, architectural, cultural and recreational
112 significance or development or any of the powers and
113 duties of the Blennerhassett historical park commission.

**§20-1A-4. Public land corporation to conduct sales of
public lands by competitive bidding, modi-
fied competitive bidding or direct sale.**

1 (a) Sales, exchanges or transfers of public lands under
2 this article shall be conducted under competitive
3 bidding procedures. However, where the secretary
4 determines it necessary and proper in order to assure
5 the following public policies including, but not limited
6 to, a preference to users, lands may be sold by modified
7 competitive bidding or without competitive bidding. In
8 recognizing public policies, the secretary shall give
9 consideration to the following potential purchasers:

10 (1) The local government entities which are in the
11 vicinity of the lands;

12 (2) Adjoining land owners.

13 (b) The policy for selecting the methods of sale is as
14 follows:

15 (1) Competitive sale is the general procedure for sales
16 of public lands and shall be used in the following
17 circumstances:

18 (A) Wherever in the judgment of the secretary the
19 lands are accessible and usable regardless of adjoining
20 land ownership; or

21 (B) Wherever the lands are within a developing or
22 urbanizing area and land values are increasing due to
23 the location of the land and interest on the competitive
24 market.

25 (2) Modified competitive sales may be used to permit
26 the adjoining landowner or local governmental entity to
27 meet the high bid at the public sale. Lands otherwise
28 offered under this procedure would normally be public
29 lands not located near urban expansion areas, or not
30 located near areas with rapidly increasing land values,
31 and where existing use of adjacent lands would be
32 jeopardized by sale under competitive bidding
33 procedures.

34 (3) Direct sale may be used when the lands offered for
35 sale are completely surrounded by lands in one owner-
36 ship with no public access, or where the lands are
37 needed by local governments.

38 (4) In no event shall lands be offered for sale by
39 "modified competitive sales" or "direct sale" unless and
40 until the corporation makes a written finding of
41 justification for use of an alternative bidding procedure.

42 (5) Subject to the bidding procedures set forth herein,
43 the corporation is authorized, at its discretion, to sell
44 public lands subject to rights of way, restrictive
45 covenants or easements retained by the corporation,
46 limiting the use of such lands to purposes consistent
47 with the use of adjoining or nearby lands owned by the
48 corporation.

49 (c) When lands have been offered for sale by one
50 method of sale and the lands remain unsold, then the
51 lands may be reoffered by another method of sale.

52 (d) In no case may lands be sold or exchanged for less
53 than fair market value. Fair market value shall be
54 determined by an appraisal made by an independent
55 person or firm chosen by the public land corporation.
56 The appraisal shall be performed using the principles
57 contained in the "Uniform Appraisal Standards for
58 Federal Land Acquisitions" published under the auspi-
59 ces of the Interagency Land Acquisition Conference,
60 United States Government Printing Office, 1972.

61 (e) The corporation may reject all bids when such bids
62 do not represent the corporation's considered value of
63 the property exclusive of the fair market value.

64 (f) The corporation shall promulgate rules, in accor-
65 dance with the provisions of chapter twenty-nine-a of
66 this code, regarding procedures for conducting public
67 land sales by competitive bidding, modified competitive
68 bidding and direct sales.

**§20-1A-5. Public land corporation to hold public hearing
before sale, exchange or transfer of land.**

1 (a) Prior to any final decision of any state agency to
2 sell, exchange or transfer land, the public land corpo-
3 ration shall:

4 (1) Prepare and reduce to writing the reasons and
5 supporting data regarding such sale or exchange. The
6 written reasons required under this section shall be
7 available for public inspection at the office of the county
8 clerk at the county courthouse of each county in which
9 the affected land is located during the two successive
10 weeks before the date of the public hearing required by
11 this section;

12 (2) Provide for a public hearing to be held at a
13 reasonable time and place within each county in which
14 the affected land is located to allow interested members
15 of the public to attend the hearing without undue
16 hardship. Members of the public may be present, submit
17 statements and testimony and question the corporation's
18 representative appointed pursuant to this section;

19 (3) Not less than thirty days prior to such public
20 hearing, provide notice to all members of the Legisla-

21 ture, to the head of the governing body of any political
22 subdivision having zoning or other land use regulatory
23 responsibility in the geographic area within which the
24 public lands are located and to the head of any political
25 subdivision having administrative or public services
26 responsibility in the geographic area within which the
27 lands are located;

28 (4) Cause to be published a notice of the required
29 public hearing. The notice shall be published as a Class
30 II legal advertisement in compliance with the provisions
31 of article three, chapter fifty-nine of this code and the
32 publication area shall be each county in which the
33 affected land is located. The public hearing shall be held
34 no earlier than the fourteenth successive day and no
35 later than the twenty-first successive day following the
36 first publication of the notice. The notice shall contain
37 the time and place of the public hearing along with a
38 brief description of the affected land;

39 (5) Cause a copy of the required notice to be posted
40 in a conspicuous place at the affected land for members
41 of the public to observe. Such notice shall remain posted
42 for two successive weeks prior to the date of the public
43 hearing;

44 (6) Appoint a representative of the corporation who
45 shall conduct the required public hearing. The corpora-
46 tion's representative shall have full knowledge of all the
47 facts and circumstances surrounding the proposed sale,
48 exchange or transfer. The representative of the corpo-
49 ration shall make a report of the public hearing
50 available for inspection by the public or, upon written
51 request of any interested person, provide a written copy
52 thereof and to all individuals previously receiving
53 written notice of the hearing within thirty days
54 following the public hearing; and

55 (7) If the evidence at the public hearing establishes by
56 a preponderance that the appraisal provided for in
57 subsection (c), section four of this article does not reflect
58 the true, fair market value, the public land corporation
59 shall cause another appraisal to be made. If the evidence
60 at the public hearing establishes by a preponderance

61 that the sale or exchange of land does not meet the
62 criteria set forth in subdivision three, section three of
63 this article, the public land corporation shall not proceed
64 with the sale or exchange of said land without judicial
65 approval.

66 The representative of the corporation conducting the
67 public hearing shall make the results of the hearing
68 available to the corporation for its consideration prior
69 to the board making decisions regarding the affected
70 lands.

71 (b) No sale, exchange or transfer of land subject to the
72 provisions of this section may be made before the
73 thirtieth successive day following the public hearing
74 required by this section, but in no event shall the sale,
75 exchange or transfer of such lands be made prior to
76 fifteen days after the report of the public hearings are
77 made available to the public in general.

**§20-1A-6. Competitive bidding and notice requirements
before the development of natural resources
on certain lands.**

1 The corporation may enter into a lease or contract for
2 the development of minerals, gas or oil on or under lands
3 in which the corporation holds any right, title or
4 interest: *Provided*, That no lease or contract may be
5 entered into for the extraction and removal of minerals
6 by surface mining or auger mining of coal. With the
7 exception of deep mining operations which are already
8 in progress and permitted as of the effective date of this
9 article, extraction of coal by deep mining methods under
10 state forests or wildlife refuges may be permitted only
11 if such lease or contract provides that no entries, portals,
12 air shafts or other incursions upon and into said land
13 incident to said mining operations may be placed or
14 constructed upon said lands or within three thousand
15 feet of the boundary thereof. Any lease or contract
16 entered into shall reserve to the state all rights to
17 subjacent surface support which the state is seized or
18 possessed of at the time of such lease or contract.
19 Notwithstanding any other provisions of the code to the

20 contrary, nothing herein shall be construed to permit
21 extraction of minerals, oil or gas by any method from,
22 on or under, any state park or state recreation area, nor
23 the extraction of minerals by strip or auger mining upon
24 any state forest or wildlife refuge. The corporation may
25 enter into a lease or contract for the development of
26 minerals, oil or gas, where such lease or contract is not
27 prohibited by any other provisions of this code, only
28 after receiving sealed bids therefor, after notice by
29 publication as a Class II legal advertisement in com-
30 pliance with the provisions of article three, chapter fifty-
31 nine of this code. The area for such publication shall be
32 each county in which such lands are located. The
33 minerals, oil or gas so advertised may be leased or
34 contracted for development at not less than the fair
35 market value, as determined by an appraisal made by
36 an independent person or firm chosen by the corpora-
37 tion, to the highest responsible bidder, who shall give
38 bond for the proper performance of the contract or lease
39 as the corporation shall designate; but the corporation
40 shall have the right to reject any and all bids and to
41 readvertise for bids. If the foregoing provisions of this
42 section have been complied with, and no bid equal to or
43 in excess of the fair market value of such natural
44 resources is received, the corporation may, at any time
45 during a period of six months after the opening of the
46 bids, lease or contract for the development of such
47 natural resources in such manner as it is deemed
48 appropriate, but the lease or contract price shall not be
49 less than the fair market value of such natural resources
50 advertised.

§20-1A-7. Adopt a state park or forest program.

1 The commissioner of the department of commerce
2 shall establish an "adopt a state park or forest program"
3 to encourage and coordinate the efforts of volunteers to
4 help maintain and improve state parks, forests, or other
5 public lands within the state.

6 The commissioner shall establish a matching grant
7 program to assist such volunteer efforts by legislative
8 rule pursuant to chapter twenty-nine-a of this code.

CHAPTER 136

(S. B. 266—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed April 4, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact sections five and fifty-six, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unlawful methods of hunting and fishing; and permit to hold a field trial, water race or wild hunt.

Be it enacted by the Legislature of West Virginia:

That sections five and fifty-six, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing.

§20-2-56. Permit to hold a field trial, shoot-to-retrieve field trial, water race or wild hunt; license exemption.

§20-2-5. Unlawful methods of hunting and fishing.

1 Except as authorized by the director, it is unlawful
2 at any time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal unless
4 it is plainly visible to him;

5 (2) Dig out, cut out or smoke out, or in any manner
6 take or attempt to take, any live wild animal or wild
7 bird out of its den or place of refuge, except as may be
8 authorized by regulations promulgated by the director
9 or by law;

10 (3) Make use of, or take advantage of, any artificial
11 light in hunting, locating, attracting, taking, trapping,
12 or killing any wild bird or wild animal, or to attempt
13 to do so, while having in his possession or subject to his
14 control, or for any person accompanying him to have in
15 his possession or subject to his control, any firearm,
16 whether cased or uncased, bow, arrow, or both, or other

17 implement or device suitable for taking, killing or
18 trapping a wild bird or animal: *Provided*, That it shall
19 not be unlawful to hunt or take raccoon, opossum or
20 skunk by the use of artificial lights. No person shall be
21 guilty of a violation of this subdivision merely because
22 he looks for, looks at, attracts or makes motionless a wild
23 bird or wild animal with or by the use of an artificial
24 light, unless at such time he has in his possession a
25 firearm, whether cased or uncased, bow, arrow, or both,
26 or other implement or device suitable for taking, killing
27 or trapping a wild bird or wild animal, or unless such
28 artificial light (other than the head lamps of an
29 automobile or other land conveyance) is attached to, a
30 part of, or used from within or upon an automobile or
31 other land conveyance.

32 Any person violating the provisions of this subdivision
33 shall be guilty of a misdemeanor, and, upon conviction
34 thereof, shall for each offense be fined not less than one
35 hundred dollars nor more than five hundred dollars and
36 shall be imprisoned in the county jail for not less than
37 ten days nor more than one hundred days;

38 (4) Hunt for, take, kill, wound or shoot at wild
39 animals or wild birds from an airplane, or other
40 airborne conveyance, an automobile, or other land
41 conveyance, or from a motor-driven water conveyance,
42 except as may be authorized by regulations promul-
43 gated by the director;

44 (5) Take any beaver or muskrat by any means other
45 than by trap;

46 (6) Catch, capture, take or kill by seine, net, bait, trap
47 or snare or like device of any kind, any wild turkey,
48 ruffed grouse, pheasant or quail;

49 (7) Destroy or attempt to destroy needlessly or
50 willfully the nest or eggs of any wild bird or have in
51 his possession such nest or eggs unless authorized to do
52 so under regulations or under a permit by the director;

53 (8) Except as provided in section six of this article,
54 carry an uncased or loaded gun in any of the woods of
55 this state except during the open firearms hunting

56 season for wild animals and nonmigratory wild birds
57 within any county of the state, unless he has in his
58 possession a permit in writing issued to him by the
59 director: *Provided*, That this section shall not prohibit
60 hunting or taking of unprotected species of wild animals
61 and wild birds and migratory wild birds, during the
62 open season, in the open fields, open water and open
63 marshes of the state;

64 (9) Except as provided in section six of this article,
65 carry an uncased or loaded gun after the hour of five
66 o'clock antemeridian on Sunday in any woods or on any
67 highway, railroad right-of-way, public road, field or
68 stream of this state, except at a regularly used rifle,
69 pistol, skeet, target or trapshooting ground or range;

70 (10) Have in his possession a loaded firearm or a
71 firearm from the magazine of which all shells and
72 cartridges have not been removed, in or on any vehicle
73 or conveyance, or its attachments, within the state,
74 except as may otherwise be provided by law or regu-
75 lation. Except as hereinafter provided, between five
76 o'clock postmeridian of one day and seven o'clock
77 antemeridian, eastern standard time of the day follow-
78 ing, any unloaded firearm, being lawfully carried in
79 accordance with the foregoing provisions, shall be so
80 carried only when in a case or taken apart and securely
81 wrapped. During the period from July first to Sep-
82 tember thirtieth, inclusive, of each year, the foregoing
83 requirements relative to carrying certain unloaded
84 firearms shall be permissible only from eight-thirty
85 o'clock postmeridian to five o'clock antemeridian,
86 eastern standard time;

87 (11) Hunt, catch, take, kill, trap, injure or pursue with
88 firearms or other implement by which wildlife may be
89 taken after the hour of five o'clock antemeridian on
90 Sunday any wild animals or wild birds: *Provided*, That
91 traps previously and legally set may be tended after the
92 hour of five o'clock antemeridian on Sunday, if the
93 person so doing shall not have firearms or long bow of
94 any description in his possession;

95 (12) Hunt with firearms or long bow while under the
96 influence of intoxicating liquor;

97 (13) Hunt, catch, take, kill, injure or pursue a wild
98 animal or bird with the use of a ferret;

99 (14) Buy raw furs, pelts or skins of fur-bearing
100 animals unless licensed to do so;

101 (15) Have in his possession or about his premises,
102 without the written permission of the director, any
103 hunting or fishing paraphernalia which cannot be used
104 lawfully in this state for hunting or fishing, and any
105 conservation officer shall remove and destroy such
106 hunting and fishing paraphernalia, whenever found in
107 this state, and the person or persons claiming ownership
108 shall have no recourse at law against such confiscation
109 and destruction;

110 (16) Catch, take, kill, or attempt to catch, take or kill
111 any fish at any time by any means other than by rod,
112 line and hooks with natural or artificial lures unless
113 otherwise authorized by law or regulation issued by the
114 director: *Provided*, That snaring of any species of
115 suckers, carp, fallfish and creek chubs shall at all times
116 be lawful;

117 (17) Employ or hire, or induce or persuade, by the use
118 of money or other things of value, or by any means, any
119 person to hunt, take, catch or kill, any wild animal or
120 wild bird except those species on which there is no
121 closed season, or to fish for, catch, take or kill any fish,
122 amphibian or aquatic life which is protected by the
123 provisions of this chapter or regulations of the director,
124 or the sale of which is prohibited;

125 (18) Hunt, catch, take, kill, capture, pursue, trans-
126 port, possess or use any migratory game or nongame
127 birds included in the terms of conventions between the
128 United States and Great Britain and between the
129 United States and United Mexican States for the
130 protection of migratory birds and wild mammals
131 concluded, respectively, August sixteen, one thousand
132 nine hundred sixteen, and February seven, one thousand
133 nine hundred thirty-six, except during the time and in

134 the manner and numbers prescribed by the Federal
135 Migratory Bird Treaty Act and regulations made
136 thereunder;

137 (19) Kill, take, catch or have in his possession, living
138 or dead, any wild bird, other than a game bird; or
139 expose for sale, or transport within or without the state
140 any such bird, except as aforesaid. No part of the
141 plumage, skin or body of any protected bird shall be sold
142 or had in possession for sale, except mounted or stuffed
143 plumage, skin, bodies or heads of such birds legally
144 taken and stuffed or mounted, irrespective of whether
145 such bird was captured within or without this state,
146 except the English or European sparrow (*Passer*
147 *domesticus*), starling (*Sturnus vulgaris*), crow (*Corvus*
148 *brachyrhynchus*) and cowbird (*Molothrus ater*), which
149 shall not be protected and the killing thereof at any time
150 is lawful;

151 (20) Use dynamite or any like explosive or poisonous
152 mixture placed in any waters of the state for the purpose
153 of killing or taking fish. Any person violating the
154 provisions of this subdivision shall be guilty of a felony,
155 and, upon conviction thereof, shall be fined not more
156 than five hundred dollars or imprisoned for not less than
157 six months nor more than three years, or both fined and
158 imprisoned;

159 (21) Have a bow and gun, or have a gun and any
160 arrow or arrows, in the fields or woods at the same time;

161 (22) Have a crossbow in the woods or fields or use a
162 crossbow to hunt for, take or attempt to take any
163 wildlife;

164 (23) Take or attempt to take turkey, bear, elk or deer
165 with any arrow unless the same is equipped with a point
166 having at least two sharp cutting edges measuring in
167 excess of three fourths of an inch wide;

168 (24) Take or attempt to take any wildlife with an
169 arrow having an explosive head or shaft, a poisoned
170 arrow, or an arrow which would affect wildlife by any
171 chemical action;

172 (25) Shoot an arrow across any public highway or

173 from aircraft, motor-driven watercraft, motor vehicle or
174 other land conveyance;

175 (26) Permit any dog owned by him or under his
176 control to chase, pursue or follow upon the track of any
177 wild animal or wild bird, either day or night, between
178 the first day of May and the fifteenth day of August next
179 following: *Provided*, That dogs may be trained on wild
180 animals and wild birds, except deer and wild turkeys,
181 and field trials may be held or conducted on the grounds
182 or lands of the owner or by his bona fide tenant or
183 tenants or upon the grounds or lands of another person
184 with his written permission or on public lands, at any
185 time: *Provided, however*, That notwithstanding any of
186 the above provisions, no person may train a dog in any
187 county, or portion thereof, in which a legal bear hunting
188 season has been established prior to the first day of July,
189 one thousand nine hundred eighty-eight, except that
190 residents may train dogs in such counties after the
191 twenty-fourth day of August through the end of the legal
192 small game hunting season: *Provided further*, That
193 nonresidents shall not train dogs in this state at any time
194 except during the legal small game hunting season: *And*
195 *provided further*, That the person training said dogs does
196 not have firearms or other implements in his possession
197 during the closed season on such wild animals and wild
198 birds, whereby wild animals or wild birds could be
199 taken or killed;

200 (27) Conduct or participate in a field trial, shoot-to-
201 retrieve field trial, water race or wild hunt hereafter
202 referred to as trial: *Provided*, That any person, group
203 of persons, club or organization may hold such trial at
204 any time of the year upon obtaining such permit as is
205 provided for in section fifty-six of this article. The
206 person responsible for obtaining said permit shall
207 prepare and keep an accurate record of the names and
208 addresses of all persons participating in said trial, and
209 make same readily available for inspection by any
210 conservation officer upon request; and

211 (28) Except as provided in section four of this article,
212 hunt, catch, take, kill or attempt to hunt, catch, take or
213 kill any wild animal, wild bird or wild fowl except

214 during the open season established by regulation of the
215 director as authorized by subdivision six, section seven,
216 article one of this chapter.

**§20-2-56. Permit to hold a field trial, shoot-to-retrieve
field trial, water race or wild hunt; license
exemption.**

1 The director may issue a permit to any person, group
2 of persons, club or organization to hold or conduct a field
3 trial, shoot-to-retrieve field trial, water race or wild
4 hunt, hereinafter referred to as a trial, upon receipt of
5 a written application setting forth: (1) The name of the
6 person, group of persons, club or organization; (2) the
7 type or kind of trial; (3) the place and county in which
8 the trial is to be held; and (4) the period or date on which
9 the trial is to be held. The fee for the permit shall be
10 five dollars.

11 No person participating in a field trial, shoot-to-
12 retrieve field trial, water race or wild hunt being held
13 under a permit authorized by this section shall be
14 required to possess a state hunting license.

CHAPTER 137

(Com. Sub. for H. B. 2705—By Delegates Love and Whitt)

[Passed April 4, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to wildlife resources; hunting, tagging and reporting bear; increasing fines and penalties; suspending licenses for illegal killing.

Be it enacted by the Legislature of West Virginia:

That section twenty-two-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-22a. Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.

1 (a) No person in any county of this state shall hunt,
2 capture, or kill any bear, or have in his possession any
3 bear, or any part thereof, including fresh pelt, except
4 during the hunting season for bear designated by rules
5 and regulations to be promulgated by the department
6 of natural resources and at no other time nor in any
7 other way than as herein and therein provided. A person
8 on killing a bear shall within twenty-four hours after
9 killing, deliver the bear or fresh skin to a conservation
10 officer or checking station for tagging. The bear shall
11 have affixed thereto an appropriate tag provided by the
12 department before any part of the bear may be trans-
13 ported more than seventy-five miles from the point of
14 kill. The checking tag shall remain on the skin until it
15 is tanned or mounted. Any bear not properly tagged, or
16 any part of such bear, shall be forfeited to the state for
17 disposal to a charitable institution, or school, or as
18 otherwise designated by the department of natural
19 resources.

20 It shall be unlawful:

21 (1) To hunt bear without a bear damage stamp as
22 prescribed in section forty-four-b of this article, in
23 addition to a hunting license as prescribed in this
24 article;

25 (2) To hunt a bear with (a) a shotgun using ammu-
26 nition loaded with more than one solid ball, or (b) a rifle
27 of less than twenty-five caliber using rimfire ammuni-
28 tion or (c) a crossbow;

29 (3) To kill or attempt to kill any bear through the use
30 of poison, or explosives, or through the use of snares,
31 steel traps or deadfalls other than as authorized herein;

32 (4) To shoot at or kill a cub bear weighing less than
33 one hundred pounds or to kill any bear accompanied by
34 such cub;

35 (5) To have in possession any part of a bear not tagged
36 in accordance with the provisions of this section;

37 (6) To enter a state game refuge with firearms for the
38 purpose of pursuing or killing a bear except under the
39 direct supervision of department personnel;

40 (7) To hunt bear with dogs during seasons other than
41 those designated for such purpose by the department of
42 natural resources; after a bear is spotted and the chase
43 has begun, to pursue the bear with other than the pack
44 of dogs in use at the beginning of the hunt;

45 (8) To train bear hunting dogs on bear or to cause
46 dogs to chase bear at times other than those designated
47 by the department of natural resources for the hunting
48 of bear;

49 (9) Notwithstanding the provisions of sections twenty-
50 three and twenty-four of this article, for any person to
51 organize for commercial purposes, or to professionally
52 outfit a bear hunt or to give or receive any consideration
53 whatsoever or any donation in money, goods or services
54 in connection with a bear hunt;

55 (10) For any person, who is not a resident of this state,
56 to hunt bear with dogs or to use dogs in any fashion for
57 the purpose of hunting bear in this state, except in
58 legally authorized hunts.

59 (b) The following shall apply to bear destroying
60 property:

61 (1) Any property owner including a lessee, who has
62 suffered damage to real or personal property including
63 loss occasioned by the death of livestock or the injury
64 thereto or the unborn issue thereof, caused by an act of
65 a bear may complain to any conservation officer of the
66 department of natural resources, for the protection
67 against such bear. Upon receipt of the complaint, such
68 officer shall immediately proceed to investigate the
69 circumstances giving rise to such complaint, and if such
70 officer is unable to personally investigate the complaint,
71 he shall designate a wildlife biologist to investigate on
72 his behalf and if the complaint is found to be justified,
73 such officer or designated person, may, together with
74 the owner and other residents, proceed to hunt and
75 destroy or capture the bear which is determined to have

76 caused the property damage: *Provided*, That only the
77 conservation officer or the wildlife biologist shall
78 determine whether the bear shall be destroyed or
79 captured. Notwithstanding any provision of this article,
80 if it is determined that the complaint is justified, the
81 officer or designated person may summon or use dogs
82 from within or without this state to effectuate the
83 hunting and destruction or capture of such bear:
84 *Provided, however*, That in the event dogs from without
85 this state are used in such hunt, the owners thereof shall
86 be the only nonresidents permitted to participate in
87 hunting such bear.

88 (2) When a property owner has suffered damage as
89 the result of an act by a bear, such owner shall file a
90 report with the director of the department of natural
91 resources, stating whether or not such bear was hunted
92 and destroyed and if so, the sex, weight and estimated
93 age of subject bear, and also submit to the department
94 an appraisal of the property damage occasioned by
95 subject bear duly signed by three competent appraisers,
96 fixing the value of the property lost. Such report shall
97 be ruled upon and the alleged damages examined by a
98 commission to which it shall be referred by the
99 department. The commission shall be composed of the
100 complaining property owner, an officer of the depart-
101 ment and a person to be selected by the officer of the
102 department and the complaining property owner. The
103 department shall by rules and regulations to be
104 promulgated, establish the procedures to be followed in
105 presenting and deciding claims under this section and
106 all such claims shall be paid in the first instance from
107 the bear damage fund provided in section forty-four-b
108 of this article, and in the event such fund is insufficient
109 to pay all claims determined by the commission to be
110 just and proper the remainder due to owners of lost or
111 destroyed property shall be paid from the special
112 revenue account of the department of natural resources.

113 (3) In all cases where the act of the bear complained
114 of by the property owner is the killing of livestock, the
115 value to be established is the fair market value of the
116 livestock at the date of death, and in cases where

117 livestock killed is pregnant, the total value shall be the
118 sum of the values of the mother and the unborn issue,
119 with the value of the unborn issue to be determined on
120 the basis of the fair market value of the issue, had it
121 been born. In no event shall the fair market value of the
122 livestock exceed twice the assessed value of the livestock
123 for personal property taxes.

124 (c) Any person who kills a bear in violation of the
125 provisions of this section shall be guilty of a misdemea-
126 nor, and, upon conviction thereof, shall be fined not less
127 than five hundred dollars nor more than one thousand
128 dollars, or imprisoned in the county jail not less than
129 thirty nor more than one hundred days, or both fined
130 and imprisoned; and the suspension of the person's
131 hunting and fishing licenses for one year.

CHAPTER 138

(H. B. 2725—By Delegates Love and Whitt)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty, article two,
chapter twenty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to wildlife resources; making a false application for a
license unlawful.

Be it enacted by the Legislature of West Virginia:

That section thirty, article two, chapter twenty of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-30. Application and statement of eligibility for licenses; procuring license in violation of chapter.

1 It shall be the duty of every person who makes
2 application for or procures any class of license for
3 himself or another to inform correctly the issuing

4 authority that the applicant is eligible and fulfills the
5 prerequisites of this chapter in respect to age, citizen-
6 ship and residence which are necessary to entitle such
7 person to have and hold the class of license applied for.
8 In the case of an alien, the applicant shall produce the
9 permit issued by the director. The possession of any
10 class of license by any licensee shall presume that such
11 licensee or his agent has duly informed the issuing
12 authority that the licensee in question was eligible to
13 have, hold and procure the class of license so issued. It
14 shall be unlawful for any person to make false applica-
15 tion for or procure a license in violation of the provisions
16 of this chapter. It shall not be necessary for the state
17 to prove, in any proceeding for an offense hereunder,
18 that false statements were or were not made, if it be
19 established that the licensee possessed a class of license
20 he was not entitled to possess, or the license procured
21 by the offender for another was of a class the licensee
22 was not entitled to possess.

CHAPTER 139

(H. B. 2192—By Delegates Love and Givens)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-a, relating to prohibiting the issuance of a hunting license to persons unless the person submits a certificate of training, another state's certificate of training or a statement that the person has previously held a hunting license; establishing a course in firearm and bow and arrow safety; providing for a certificate of training to be issued upon completion thereof; and providing credit toward license reinstatement.

Be it enacted by the Legislature of West Virginia:

That article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended by adding thereto a new section, designated section thirty-a, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-30a. Certificate of training.

1 (a) Notwithstanding any other provisions of this
2 article, no hunting license may be issued to any person
3 unless the person submits to the person authorized to
4 issue hunting licenses either:

5 (1) A certificate of training as provided for in this
6 section or proof of completion of any course which
7 promotes as a major objective, safety in the handling of
8 firearms and of bow and arrows and which course is
9 approved by the Hunter Education Association;

10 (2) A certificate of training issued by another state or
11 Canadian province; or

12 (3) An affidavit to be included on the license applica-
13 tion form and signed by the person applying for a
14 hunting license, stating that the person has held a
15 hunting license issued by this or another state or
16 Canadian province in a prior year. The provision of this
17 section shall become effective the first day of January,
18 one thousand nine hundred ninety.

19 (b) The director shall establish a course in the safe
20 handling of firearms and of bows and arrows, such as
21 the course approved by the Hunter Education Associa-
22 tion. This course shall be given at least once per year
23 in each county in this state and shall be taught by
24 instructors certified by the director. In establishing and
25 conducting this course, the director may cooperate with
26 any reputable association or organization which pro-
27 motes as a major objective, safety in the handling of
28 firearms and of bows and arrows: *Provided*, That any
29 person holding a class A-L or AB-L lifetime resident
30 license obtained prior to his or her fifteenth birthday
31 shall be required to obtain a certificate of training as
32 provided for in this section. This course of instruction
33 shall be offered without charge, except for materials or
34 ammunition consumed. Upon satisfactory completion of
35 the course, each person instructed in the course shall be

36 issued a certification of training for the purposes of
37 complying with the requirements of subsection (a) of
38 this section. The certificate shall be in the form
39 prescribed by the director and shall be valid for hunting
40 license application purposes.

41 (c) (1) Upon satisfactory completion of this course,
42 any person whose hunting license has been revoked for
43 a violation of the provisions of this chapter of the code
44 may petition the director for a reduction of his revoca-
45 tion time. However, under no circumstances may the
46 time be reduced to less than one year.

47 (2) Successful completion of this course shall be
48 required to consider the reinstatement of a hunting
49 license of any person whose license has been revoked due
50 to a conviction for negligent shooting of a human being
51 or of livestock under the provisions of section fifty-seven
52 of this article or of section eleven, article seven, chapter
53 sixty-one of this code, and who petitions the director for
54 an early reinstatement of his hunting privileges. Such
55 a petitioner shall also comply with the other require-
56 ments for consideration of reinstatement contained in
57 section thirty-eight of this article.

58 Nothing herein contained shall mandate that any
59 county school district in the state be responsible for
60 implementing hunter safety education programs.

CHAPTER 140

(H. B. 2095—By Delegates Murphy and Love)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-four, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to using interest accrued from game and fish license fees for the department of natural resources in the same manner as license fees are used.

Be it enacted by the Legislature of West Virginia:

That section thirty-four, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-34. Disposition of license fees; reports of agents; special funds and uses.

1 All persons in this state who receive money for
2 licenses and permits required by this chapter shall, on
3 the first day of each month, pay over to the director all
4 moneys so collected by them during the preceding
5 month. Such payment shall be accompanied by a report
6 showing, in the case of license money, the name of the
7 county, the class of license sold, the names and addresses
8 of the persons paying the same, the date of the receipt
9 thereof, the signature of the person receiving and
10 remitting such funds, and such other information as the
11 director may deem necessary.

12 Except where other provisions of this chapter specif-
13 ically require and direct payment of any such moneys
14 into designated funds for specific uses and purposes, all
15 moneys so received by the director hereunder shall be
16 by him promptly paid into the state treasury and shall
17 be credited to the department of natural resources and
18 shall be further credited to and kept in a separate fund
19 designated "license fund—wildlife resources" which
20 shall be used and paid out, upon order of the director
21 solely for law enforcement and for purposes directly
22 relating to the conservation, protection, propagation and
23 distribution of wildlife in this state pursuant to the
24 provisions of this chapter.

25 No funds from the "license fund—wildlife resources"
26 shall be expended for recreational facilities or activities
27 that are used by or for the benefit of the general public,
28 rather than purchasers of hunting and fishing licenses.

29 Of the annual license fund income, the director shall
30 retain ten percent for capital improvements and land
31 purchases benefiting state wildlife, forty percent shall
32 be budgeted to the wildlife resources division, forty
33 percent to law enforcement and ten percent apportioned

34 by the director within provisions of this section. Any
35 unexpended moneys for capital improvements and land
36 purchases shall be carried forward.

37 All interest generated from game and fish license fees
38 after the thirty-first day of July, one thousand nine
39 hundred ninety-one, shall be used by the director for the
40 department of natural resources in the same manner as
41 is provided for the use of license fees.

CHAPTER 141

(H. B. 2354—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed March 21, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated
section forty- four, relating to free fishing days.

Be it enacted by the Legislature of West Virginia:

That article two, chapter twenty of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
be amended by adding thereto a new section, designated
section forty-four to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-44. Free fishing days.

1 The director may designate up to two days each year
2 as free sport fishing days. On a designated free fishing
3 day, an individual is entitled to fish for all legal fish in
4 all counties of the state without having a Class B, Class
5 F, Class I or Class O license and without the payment
6 of any license fee, subject to the same privileges and
7 restrictions applicable to a holder of any such license.

CHAPTER 142

(H. B. 2191—By Delegates Love and Givens)

[Passed March 22, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-six-j, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting the use of muzzle-loaded pistols under provisions for muzzle-loading deer hunting licenses.

Be it enacted by the Legislature of West Virginia:

That section forty-six-j, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46j. Class V resident and Class VV nonresident muzzle-loading deer hunting licenses.

1 There shall be a special season of at least three days
2 each year for the taking of deer with muzzle-loading
3 firearms, either rifles or pistols, to be set at such time
4 and to be of such duration as determined by the
5 commission: *Provided*, That such special season shall not
6 be set prior to the regular season for the taking of deer
7 with firearms. For a minimum of two days during this
8 season, deer of either sex may be taken with muzzle-
9 loading firearms in all counties open for the taking of
10 antlerless deer as provided in section forty-six-b of this
11 article. Antlered deer only may be taken in all other
12 counties open for the taking of deer with firearms.

13 Only single shot muzzle-loading firearms with iron
14 sights having a bore diameter of no less than forty-four
15 one-hundredths inch shall be legal firearms for the
16 taking of deer during the special season provided herein.

17 In a calendar year, a hunter who has previously killed
18 more than one deer may hunt for and take only antlered
19 deer during the special season provided herein.

20 The special season provided herein shall be concurrent
21 with all other seasons designated for the taking of game.

22 Any person wishing to hunt for and kill deer during
23 the special muzzle-loading season must possess a valid
24 Class V or Class VV license, except that this require-
25 ment shall not apply to a resident of West Virginia who
26 is not required to obtain a license or permit to hunt as
27 provided in this chapter. A Class V license shall be a
28 resident muzzle-loading deer hunting license. A Class
29 VV license shall be a nonresident muzzle-loading deer
30 hunting license. The licenses shall be issued in a form
31 prescribed by the director, shall be in addition to a Class
32 A, Class AB or Class E license and shall be valid only
33 when accompanied thereby. The fee for the Class V
34 license shall be five dollars. The fee for the Class VV
35 license shall be ten dollars.

CHAPTER 143

(Com. Sub. for H. B. 2357—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two-b,
chapter twenty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to lifetime hunting, fishing and trapping licenses.

Be it enacted by the Legislature of West Virginia:

That section seven, article two-b, chapter twenty of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted to read as follows:

ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-7. Lifetime hunting, fishing and trapping licenses created.

1 Pursuant to section three of this article the following
2 lifetime hunting, fishing and trapping licenses are
3 hereby created and, for the lifetime of the licensee, shall
4 serve in lieu of the equivalent annual license:

5 (a) A Class A-L lifetime resident statewide hunting
6 and trapping license, the fee for which shall be two
7 hundred dollars: *Provided*, That the fee shall be one
8 hundred dollars for any resident who has not reached
9 his or her second birthday; for proof of age, a certified
10 birth certificate or other notarized record of birth shall
11 be submitted with the license application;

12 (b) A Class AB-L lifetime resident combination
13 statewide hunting, fishing and trapping license, the fee
14 for which shall be three hundred dollars: *Provided*, That
15 the fee shall be one hundred fifty dollars for any
16 resident who has not reached his or her second birthday;
17 for proof of age, a certified birth certificate or other
18 notarized record of birth shall be submitted with the
19 license application;

20 (c) A Class B-L lifetime resident statewide fishing
21 license, the fee for which shall be two hundred dollars:
22 *Provided*, That the fee shall be one hundred dollars for
23 any resident who has not reached his or her second
24 birthday; for proof of age, a certified birth certificate
25 or other notarized record of birth shall be submitted
26 with the license application; and

27 (d) A Class O-L lifetime resident trout fishing license,
28 the fee for which shall be one hundred dollars: *Provided*,
29 That the fee shall be fifty dollars for any resident who
30 has not reached his or her second birthday; for proof of
31 age, a certified birth certificate or other notarized
32 record of birth shall be submitted with the license
33 application.

CHAPTER 144

(Com. Sub. for S. B. 58—By Senators Parker, Chernenko,
Brackenrich and Hawse)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five, six, seven, ten
and eleven, article three, chapter twenty of the code of
West Virginia, one thousand nine hundred thirty-one, as

amended, relating to changing permitted times and procedures for open burning; use of a safety strip; misdemeanor offense created; increasing fines and penalties; regulating underground coal fires; and providing that landowners exercise all means to extinguish forest fires.

Be it enacted by the Legislature of West Virginia:

That sections five, six, seven, ten and eleven, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

- §20-3-5. Forest fire seasons; permits for fires; prohibited fires; closure of forests.
- §20-3-6. Failure of person to extinguish fire started or used by him; throwing lighted material on forest land.
- §20-3-7. Starting fire on lands of another; penalties.
- §20-3-10. Spark arresters for sawmills, etc.; risk and hazard reduction to protect against fires; underground coal fires.
- §20-3-11. Recovery of costs incurred in fighting fires; landowners responsibility to extinguish fires.

§20-3-5. Forest fire seasons; permits for fires; prohibited fires; closure of forests.

1 The periods of each year between March first and
2 May thirty-first, inclusive, and October first and
3 December thirty-first, inclusive, are hereby designated
4 as forest fire seasons. No person shall during any such
5 fire season, except between the hours of four o'clock p.m.
6 and seven o'clock a.m. prevailing time, set on fire or
7 cause to be set on fire any forest land, or any grass,
8 grain, stubble, slash, debris, or other inflammable
9 materials. Any fire set during this time shall be
10 extinguished prior to seven o'clock a.m. prevailing time.
11 Such prohibition of fires between seven o'clock a.m. and
12 four o'clock p.m. prevailing time shall not be construed
13 to include (1) small fires set for the purpose of food
14 preparation, or providing light or warmth around which
15 all grass, brush, stubble, or other debris has been
16 removed for a distance of ten feet from the fire, and (2)
17 burning which may be conducted at any time when the
18 ground surrounding the burning site is covered by one

19 inch or more of snow. Any person who sets or causes to
20 be set any fire permitted by this section shall not leave
21 such fire unattended for any period of time.

22 The director or his designated appointees or em-
23 ployees may issue permits authorizing fires prohibited
24 by the preceding paragraph. Such permits may be
25 granted on such conditions and for such periods of time
26 as the director deems necessary to prevent danger from
27 fire to life or property, and noncompliance with any
28 term of the permit shall be a violation of this section.
29 Any permit which was obtained through willful misre-
30 presentation shall be invalid. All permit holders shall
31 take all necessary and adequate precautions to confine
32 and control any fire permitted by the authorization;
33 failure to take such action shall be a violation of this
34 section and shall be justification for the director or his
35 duly authorized representative to cancel the permit.

36 When the director considers it necessary to prevent
37 danger from fire to life or property, he may, with the
38 prior approval of the governor, prohibit the starting of
39 and require the extinguishment of any fire in any area
40 designated by the director, and such action may include
41 any fire for which a permit has been issued under the
42 preceding paragraph. In addition, if so deemed neces-
43 sary, the director may, with the prior approval of the
44 governor, designate any forest area as a danger area and
45 prohibit entry thereon or use thereof except for the
46 purposes and on the conditions he designates. The
47 director by proclamation shall establish such areas and
48 designate which fires are prohibited therein; and if a
49 danger area is established, he shall announce the
50 purposes for which and conditions under which entry
51 thereon or use thereof may be made. Action hereunder
52 may be taken by the director at any time during the
53 year. Notice of any proclamation hereunder shall be
54 furnished to newspapers, radio stations and television
55 stations which serve the area designated. The proclama-
56 tion shall not be effective until twenty-four hours after
57 it is proclaimed. Any proclamation hereunder shall
58 remain in force until the director, with the approval of
59 the governor, by order terminates it. The order shall

60 designate the time of termination, and notice of any such
61 order shall be furnished to each newspaper, radio
62 station and television station which received a copy of
63 the proclamation. Any person who starts or fails to
64 extinguish a fire so prohibited or enters or uses a danger
65 area otherwise than permitted shall be guilty of a
66 violation of this section.

67 No burning allowed by this section may be done unless
68 all inflammable material has been removed from
69 around the material to be burned as a safety strip for
70 a distance which ensures that the fire will not escape
71 and which is no less than ten feet. Any person or his
72 agent or employee who sets or causes to be set any fire
73 at any time in the use and occupation of any land on
74 which the burning was being done is in violation of this
75 section if fire escapes beyond the safety strip and shall
76 be guilty of a misdemeanor.

**§20-3-6. Failure of person to extinguish fire started or
used by him; throwing lighted material on
forest land.**

1 Any person who, by himself, or by his employees,
2 agents or guides, or as an employee, agent or guide of
3 any other person, shall at any time build or use any fire
4 in any field, in any public or private road, or in any area
5 adjacent to or in any forest land in this state, shall,
6 before leaving such fire for any period of time, totally
7 extinguish the same.

8 A person shall not at any time throw or place any
9 lighted match, cigar, cigarette, firecracker or lighted
10 material on any forest land, private road, public
11 highway or railroad right-of-way within this state.

12 Any person who violates any provision of this section
13 shall be guilty of a misdemeanor.

§20-3-7. Starting fire on lands of another; penalties.

1 Any person who willfully sets or causes to be set on
2 fire any forest land, grass, grain, stubble, brush, slash,
3 debris, or any other inflammable substance upon the
4 property of another without his consent, or in a place
5 from which it is reasonable to expect that the fire may

6 spread to the property of another without his consent,
7 and as a result of either causes damage or destruction
8 to any natural resources in or on the other person's
9 property, shall be guilty of a felony, and, upon conviction
10 thereof, shall be fined not less than five hundred dollars
11 nor more than five thousand dollars, or be imprisoned
12 for not less than one year nor more than five years, or
13 both, in the discretion of the court.

§20-3-10. Spark arresters for sawmills, etc.; risk and hazard reduction to protect against fires; underground coal fires.

1 No person, firm or corporation shall use or operate on
2 land subject to fire by any cause, a sawmill, a power
3 shovel, or an engine or machine capable of throwing
4 sparks, unless the equipment is provided with an
5 approved spark arrester. Escape of fire from such
6 equipment shall be prima facie evidence that such
7 appliance was not maintained properly in compliance
8 with this section.

9 Any person, firm or corporation owning any land and
10 knowing of inflammable waste disposal on said land,
11 and any person, firm or corporation using any land for
12 the purpose of inflammable waste disposal, shall remove
13 annually all grass, brush, debris and other inflammable
14 material adjacent to such disposal areas to provide
15 adequate protection to prevent the escape of fire to
16 adjacent lands. Escape of fire from any such disposal
17 area shall be prima facie evidence that this section had
18 not been complied with.

19 Any person, firm or corporation owning or leasing any
20 mineral interests and knowing of underground coal
21 being on fire under that land shall between the first of
22 November and the thirty-first of December of each year
23 clear away all inflammable material within forty feet
24 of any mine break or other opening through which the
25 fire could escape to the surface. Any person, firm or
26 corporation owning any underground mineral interests
27 shall use all practical means to confine, extinguish or
28 suppress any such fire in such underground minerals.

29 Any person, firm or corporation violating any provi-
30 sion of this section shall be guilty of a misdemeanor.

**§20-3-11. Recovery of costs incurred in fighting fires;
landowners responsibility to extinguish fires.**

1 The director shall, in the name of the state, recover
2 from the person or persons, firms or corporations whose
3 negligence or whose violation of any provision of this
4 article caused any fire at any time on grass or forest
5 land, the amount expended by the state for the personal
6 services of persons especially employed under the
7 provisions of section four of this article to control,
8 confine, extinguish or suppress such fire, and the costs
9 associated therewith, including payment for the per-
10 sonal services rendered by full-time state department of
11 natural resources employees, operating costs of state
12 equipment used and costs related thereto in controlling,
13 confining, extinguishing or suppressing such fire. Such
14 recovery shall not bar an action for damages by any
15 other person.

16 Any such fire which was caused by a trespasser or by
17 a person who was upon the property without the consent
18 of the owner shall not be deemed caused by the
19 negligence of the owner; but the owner shall use all
20 practical means to confine, extinguish or suppress any
21 such fire on his land even though it was caused by any
22 such person. If he fails to do so, after becoming aware
23 of such fire, the director shall, in the name of the state,
24 recover from him amounts expended by the state for the
25 personal services of persons especially employed under
26 the provisions of section four of this article to control,
27 confine, extinguish or suppress such fire and the costs
28 associated therewith, including payment for the per-
29 sonal services rendered by full-time state department of
30 natural resources employees, operating costs of state
31 equipment used and costs related thereto in controlling,
32 confining, extinguishing or suppressing such fire.

33 Any time that a landowner, his or her agent or
34 employee is aware of a fire on the landowner's property,
35 the landowner shall use all practical means to confine,
36 extinguish or suppress the fire.

CHAPTER 145

(H. B. 2224—By Delegates M. Burke and Stemple)

[Passed March 22, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-five and twenty-nine, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including the State of Ohio in the Middle Atlantic Interstate Forest Fire Protection Compact.

Be it enacted by the Legislature of West Virginia:

That sections twenty-five and twenty-nine, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

§20-3-25. Governor's authority to execute.

§20-3-29. Other powers supplementary.

PART III. MIDDLE ATLANTIC INTERSTATE FOREST FIRE PROTECTION COMPACT.

§20-3-25. Governor's authority to execute.

1 The governor of West Virginia, on behalf of this state,
2 is hereby authorized to execute a compact in substan-
3 tially the following form, with any one or more of the
4 states of Delaware, Maryland, New Jersey, Ohio,
5 Pennsylvania and Virginia, and the Legislature hereby
6 signifies in advance its approval and ratification of such
7 compact:

8 MIDDLE ATLANTIC INTERSTATE FOREST
9 FIRE PROTECTION COMPACT

10 ARTICLE I.

11 The purpose of this compact is to promote effective
12 prevention and control of forest fires in the middle
13 Atlantic region of the United States by the development
14 of integrated forest fire plans, by the maintenance of
15 adequate forest fire-fighting services by the member
16 states, and by providing for mutual aid in fighting forest

17 fires among the compacting states of the region and
18 with states which are party to other regional forest fire
19 protection compacts or agreements.

20 ARTICLE II.

21 This compact shall become operative immediately as
22 to those states ratifying it whenever any two or more
23 of the states of Delaware, Maryland, New Jersey, Ohio,
24 Pennsylvania, Virginia and West Virginia which are
25 contiguous have ratified it and Congress has given
26 consent thereto.

27 ARTICLE III.

28 In each state, the state forester or officer holding the
29 equivalent position who is responsible for forest fire
30 control shall act as compact administrator for that state
31 and shall consult with like officials of the other member
32 states and shall implement cooperation between such
33 states in forest fire prevention and control.

34 The compact administrators of the member states
35 shall organize to coordinate the services of the member
36 states and provide administrative integration in carry-
37 ing out the purposes of this compact.

38 The compact administrators shall formulate and, in
39 accordance with need, from time to time, revise a
40 regional forest fire plan for the member states.

41 It shall be the duty of each member state to formulate
42 and put in effect a forest fire plan for that state and take
43 such measures as may be necessary to integrate such
44 forest fire plan with the regional forest fire plan
45 formulated by the compact administrators.

46 ARTICLE IV.

47 Whenever the state forest fire control agency of a
48 member state requests aid from the state forest fire
49 control agency of any other member state in combating,
50 controlling or preventing forest fires, it shall be the duty
51 of the state forest fire control agency of that state to
52 render all possible aid to the requesting agency which
53 is consonant with the maintenance of protection at home.

ARTICLE V.

Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and maintenance of employees and equipment incurred in connection with such request: *Provided*, That nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other costs or from loaning such equipment or from donating such services to the receiving member state without charge or cost.

Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state: *Provided*, That nothing herein shall be construed as relieving any

95 person from liability for his own negligent act or
96 omission, or as imposing liability for such negligent act
97 or omission upon any state.

98 For the purposes of this compact the term "employee"
99 shall include any volunteer or auxiliary legally included
100 within the forest fire-fighting forces of the aiding state
101 under the laws thereof.

102 The compact administrators shall formulate proce-
103 dures for claims and reimbursement under the provi-
104 sions of this article, in accordance with the laws of the
105 member states.

106 ARTICLE VI.

107 Nothing in this compact shall be construed to auth-
108 orize or permit any member state to curtail or diminish
109 its forest fire-fighting forces, equipment, services or
110 facilities, and it shall be the duty and responsibility of
111 each member state to maintain adequate forest fire-
112 fighting forces and equipment to meet demands for
113 forest fire protection within its borders in the same
114 manner and to the same extent as if this compact were
115 not operative.

116 Nothing in this compact shall be construed to limit or
117 restrict the powers of any state ratifying the same to
118 provide for the prevention, control and extinguishment
119 of forest fires, or to prohibit the enactment or enforce-
120 ment of state laws, rules or regulations intended to aid
121 in such prevention, control and extinguishment in such
122 state.

123 Nothing in this compact shall be construed to affect
124 any existing or future cooperative relationship or
125 arrangement between the United States forest service
126 and a member state or states.

127 ARTICLE VII.

128 The compact administrators may request the United
129 States forest service to act as the primary research and
130 coordinating agency of the middle Atlantic interstate
131 forest fire protection compact in cooperation with the
132 appropriate agencies in each state, and the United
133 States forest service may accept the initial responsibility
134 in preparing and presenting to the compact administra-

135 tors its recommendations with respect to the regional
136 fire plan. Representatives of the United States forest
137 service may attend meetings of the compact
138 administrators.

139 **ARTICLE VIII.**

140 The provisions of articles four and five of this compact
141 which relate to mutual aid in combating, controlling or
142 preventing forest fires shall be operative as between any
143 state party to this compact and any other state which
144 is party to a regional forest fire protection compact in
145 another region: *Provided*, That the Legislature of such
146 other state shall have given its assent to such mutual aid
147 provisions of this compact.

148 **ARTICLE IX.**

149 This compact shall continue in force and remain
150 binding on each state ratifying it until the Legislature
151 or the governor of such state takes action to withdraw
152 therefrom. Such action shall not be effective until six
153 months after notice thereof has been sent by the chief
154 executive of the state desiring to withdraw to the chief
155 executive of all states then parties to the compact.

§20-3-29. Other powers supplementary.

1 Any powers herein granted to the state forester shall
2 be regarded as in aid of and supplemental to, and in no
3 case a limitation upon, any of the powers vested in said
4 director by other laws of the State of West Virginia or
5 by the laws of the State of Delaware, Maryland, New
6 Jersey, Ohio, Pennsylvania and Virginia, or by the
7 Congress or the terms of said compact.

CHAPTER 146

(H. B. 2677—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact section six, article five-a,
chapter twenty of the code of West Virginia, one

thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section six-a, relating to form of application for permit under the water pollution control act; information required; water quality management fund established; permit application fees; annual permit fees; dedication of proceeds; rules and regulations.

Be it enacted by the Legislature of West Virginia:

That section six, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section six-a, to read as follows:

ARTICLE 5A. WATER POLLUTION CONTROL ACT.

§20-5A-6. Form of application for permit; information required.

§20-5A-6a. Water quality management fund established; permit application fees; annual permit fees; dedication of proceeds; rules and regulations.

§20-5A-6. Form of application for permit; information required.

1 The chief shall prescribe a form of application for all
2 permits for any activity specified in section five of this
3 article and, notwithstanding any other provision of law
4 to the contrary, no other discharge permit or discharge
5 authorization from any other state department, agency,
6 commission, board or officer shall be required for such
7 activity except that which is required from the depart-
8 ment of mines by the provisions of chapter twenty-two
9 of this code. All applications must be submitted on a
10 form as prescribed above. An applicant shall furnish all
11 information reasonably required by any such form,
12 including without limiting the generality of the forego-
13 ing, a plan of maintenance and proposed method of
14 operation of the activity or activities. Until all such
15 required information is furnished, an application shall
16 not be considered a complete application. The chief and
17 board shall protect any information (other than effluent
18 data) contained in such permit application form, or

19 other records, reports or plans as confidential upon a
20 showing by any person that such information, if made
21 public, would divulge methods or processes entitled to
22 protection as trade secrets of such person. If, however,
23 the information being considered for confidential
24 treatment is contained in a national pollutant discharge
25 elimination form, the chief or board shall forward such
26 information to the regional administrator of the United
27 States environmental protection agency for his concur-
28 rence in any determination of confidentiality.

**§20-5A-6a. Water quality management fund established;
permit application fees; annual permit
fees; dedication of proceeds; rules and
regulations.**

1 (a) A special revenue fund designated the "Water
2 Quality Management Fund" shall be established in the
3 state treasury on the first day of July, one thousand nine
4 hundred eighty-nine.

5 (b) The permit application fees and annual permit fees
6 established and collected pursuant to this section shall
7 be deposited into the water quality management fund.
8 The director shall expend the proceeds of the water
9 quality management fund for the review of initial
10 permit applications, renewal permit applications and
11 permit issuance activities.

12 (c) The director shall promulgate rules in accordance
13 with the provisions of chapter twenty-nine-a of this code,
14 to establish a schedule of application fees for which the
15 appropriate fee shall be submitted by the applicant to
16 the department with the application filed pursuant to
17 this article for any state water pollution control permit
18 or national pollutant discharge elimination system
19 permit. Such schedule of application fees shall be
20 designed to establish reasonable categories of permit
21 application fees based upon the complexity of the permit
22 application review process required by the department
23 pursuant to the provisions of this article and the rules
24 promulgated thereunder: *Provided*, That no initial
25 application fee shall exceed seven thousand five hundred
26 dollars for any facility nor shall any permit renewal

27 application fee exceed two thousand five hundred
28 dollars. The department shall not process any permit
29 application pursuant to this article until said permit
30 application fee has been received.

31 (d) The director shall promulgate rules in accordance
32 with the provisions of chapter twenty-nine-a of this code,
33 to establish a schedule of annual permit fees which shall
34 be assessed annually upon each person holding a state
35 water pollution control permit or national pollutant
36 discharge elimination system permit issued pursuant to
37 this article. Each person holding such a permit shall pay
38 the prescribed annual permit fee to the department
39 pursuant to the rules and regulations promulgated
40 hereunder. Such schedule of annual permit fees shall be
41 designed to establish reasonable categories of annual
42 permit fees based upon the relative potential of such
43 categories or permits to degrade the waters of the state:
44 *Provided*, That no annual permit fee may exceed two
45 thousand five hundred dollars. Any such permit issued
46 pursuant to this article shall be void when the annual
47 permit fee is more than one hundred eighty days past
48 due pursuant to the rules promulgated hereunder.

49 (e) The provisions of this section shall not be applica-
50 ble to fees required for permits issued under article
51 three, chapter twenty-two-a of this code.

CHAPTER 147

(H. B. 2761—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and twenty-four,
article five-c, chapter twenty of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, all relating to the West Virginia water
development authority by adding thereto provisions
authorizing the refinancing of certain existing debt of
local governmental agencies and increasing the limit on

borrowing by the water development authority from one hundred million dollars to two hundred million dollars.

Be it enacted by the Legislature of West Virginia:

That sections five and twenty-four, article five-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5C. WEST VIRGINIA WATER DEVELOPMENT AUTHORITY.

§20-5C-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies shall be subject to terms of loan agreements.

§20-5C-24. Authorized limit on borrowing.

§20-5C-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies shall be subject to terms of loan agreements.

1 To accomplish the public policies and purposes and to
2 meet the responsibility of the state as set forth in this
3 article, the West Virginia water development authority
4 may initiate, acquire, construct, maintain, repair and
5 operate water development projects or cause the same
6 to be operated pursuant to a lease, sublease or agree-
7 ment with any person or governmental agency; may
8 make loans and grants to governmental agencies for the
9 acquisition or construction of water development
10 projects by such governmental agencies, which loans
11 may include amounts to refinance debt issued for
12 existing water development projects of the governmen-
13 tal agency when such refinancing is in conjunction with
14 a loan for a new water development project: *Provided,*
15 That the amount of the refinancing may not exceed fifty
16 percent of the loan to the governmental agency; and may
17 issue water development revenue bonds of this state,
18 payable solely from revenues, to pay the cost of, or
19 finance, in whole or in part, by loans to governmental
20 agencies, such projects. A water development project
21 shall not be undertaken unless it has been determined
22 by the authority to be consistent with any applicable
23 comprehensive plan of water management approved by

24 the director of the department of natural resources or
25 in the process of preparation by such director and to be
26 consistent with the standards set by the state water
27 resources board, for the waters of the state affected
28 thereby. Any resolution of the authority providing for
29 acquiring or constructing such projects or for making
30 a loan or grant for such projects shall include a finding
31 by the authority that such determinations have been
32 made. A loan agreement shall be entered into between
33 the authority and each governmental agency to which
34 a loan is made for the acquisition or construction of a
35 water development project, which loan agreement shall
36 include without limitation the following provisions:

37 (1) The cost of such project, the amount of the loan,
38 the terms of repayment of such loan and the security
39 therefor, which may include, in addition to the pledge
40 of all revenues from such project after a reasonable
41 allowance for operation and maintenance expenses, a
42 deed of trust or other appropriate security instrument
43 creating a lien on such project;

44 (2) The specific purposes for which the proceeds of the
45 loan shall be expended including the refinancing of
46 existing water development project debt as provided
47 above, the procedures as to the disbursement of loan
48 proceeds and the duties and obligations imposed upon
49 the governmental agency in regard to the construction
50 or acquisition of the project;

51 (3) The agreement of the governmental agency to
52 impose, collect, and, if required to repay the obligations
53 of such governmental agency under the loan agreement,
54 increase, service charges from persons using said
55 project, which service charges shall be pledged for the
56 repayment of such loan together with all interest, fees
57 and charges thereon and all other financial obligations
58 of such governmental agency under the loan agreement;
59 and

60 (4) The agreement of the governmental agency to
61 comply with all applicable laws, rules and regulations
62 issued by the authority or other state, federal and local

- 63 bodies in regard to the construction, operation, mainte-
64 nance and use of the project.

§20-5C-24. Authorized limit on borrowing.

- 1 The aggregate principal amount of bonds and notes
2 issued by the authority shall not exceed two hundred
3 million dollars outstanding at any one time: *Provided,*
4 That in computing the total amount of bonds and notes
5 which may at any one time be outstanding, the principal
6 amount of any outstanding bonds or notes refunded or
7 to be refunded either by application of the proceeds of
8 the sale of any refunding bonds or notes of the authority
9 or by exchange for any such refunding bonds or notes,
10 shall be excluded.

CHAPTER 148

(Com. Sub. for S. B. 262—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, six, seven, fourteen and sixteen, article five-e, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article five-e by adding thereto two new sections, designated sections eight-a and twenty-four; and to amend and reenact sections two and six, article five-f of said chapter twenty, all relating to solid and hazardous waste management generally; declaration of hazardous waste management policy; legislative findings and purposes; definitions; designation of department of natural resources as the state hazardous waste management lead agency; powers and duties of director, department of natural resources; integration with other acts; establishment of study of hazardous waste management; promulgation of regulations by director, department of natural resources; authority and jurisdiction of other state agencies; corrective action; enforcement orders; hearings; civil penalties and

injunctive relief; financial responsibility provisions; solid waste management definitions; order, inspections and enforcement; and civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, seven, fourteen and sixteen, article five-e, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article five-e be further amended by adding thereto two new sections, designated sections eight-a and twenty-four; and that sections two and six, article five-f of said chapter twenty be amended and reenacted, all to read as follows:

CHAPTER 20. NATURAL RESOURCES.

Article

5E. Hazardous Waste Management Act.

5F. Solid Waste Management Act.

ARTICLE 5E. HAZARDOUS WASTE MANAGEMENT ACT.

§20-5E-2. Declaration of policy.

§20-5E-3. Definitions.

§20-5E-4. Designation of department of natural resources as the state hazardous waste management lead agency.

§20-5E-5. Powers and duties of director; integration with other acts; establishment of study of hazardous waste management.

§20-5E-6. Promulgation of regulations by director.

§20-5E-7. Authority and jurisdiction of other state agencies.

§20-5E-8a. Corrective action.

§20-5E-14. Enforcement orders; hearings.

§20-5E-16. Civil penalties and injunctive relief.

§20-5E-24. Financial responsibility provisions.

§20-5E-2. Declaration of policy.

1 (a) The Legislature finds that:

2 (1) Continuing technological progress and increases in
3 the amount of manufacture and the abatement of air
4 and water pollution have resulted in ever increasing
5 quantities of hazardous wastes;

6 (2) The public health and safety and the environment
7 are threatened where hazardous wastes are not man-
8 aged in an environmentally sound manner;

9 (3) The knowledge and technology necessary for

10 alleviating adverse health, environmental and aesthetic
11 impacts resulting from current hazardous waste man-
12 agement and disposal practices are generally available;

13 (4) The manufacture, refinement, processing, treat-
14 ment and use of coal, raw chemicals, ores, petroleum,
15 gas and other natural and synthetic products are
16 activities that make a significant contribution to the
17 economy of this state; and

18 (5) The problem of managing hazardous wastes has
19 become a matter of statewide concern.

20 (b) Therefore, it is hereby declared that the purposes
21 of this article are:

22 (1) To protect the public health and safety, and the
23 environment from the effects of the improper, inade-
24 quate or unsound management of hazardous wastes;

25 (2) To establish a program of regulation over the
26 storage, transportation, treatment and disposal of
27 hazardous wastes;

28 (3) To assure the safe and adequate management of
29 hazardous wastes within this state; and

30 (4) To assume regulatory primacy through Subtitle C
31 of the Resource Conservation and Recovery Act.

§20-5E-3. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (1) "Chief" means the chief of the division of waste
4 management of the department of natural resources;

5 (2) "Director" means the director of the department
6 of natural resources;

7 (3) "Disposal" means the discharge, deposit, injection,
8 dumping, spilling, leaking or placing of any hazardous
9 waste into or on any land or water so that such
10 hazardous waste or any constituent thereof may enter
11 the environment or be emitted into the air, or dis-
12 charged into any waters, including ground waters;

13 (4) "Division" means the division of waste manage-
14 ment of the department of natural resources;

15 (5) "Generation" means the act or process of produc-
16 ing hazardous waste materials;

17 (6) "Hazardous and Solid Waste Amendments of
18 1984" means the federal Hazardous and Solid Waste
19 Amendments of 1984 (P.L. 98-616) amending the
20 Resource Conservation and Recovery Act;

21 (7) "Hazardous waste" means a waste or combination
22 of wastes, which because of its quantity, concentration
23 or physical, chemical or infectious characteristics, may
24 (A) cause, or significantly contribute to, an increase in
25 mortality or an increase in serious irreversible, or
26 incapacitating reversible, illness; or (B) pose a substan-
27 tial present or potential hazard to human health or the
28 environment when improperly treated, stored, trans-
29 ported, disposed of or otherwise managed;

30 (8) "Hazardous waste fuel" means fuel produced from
31 any hazardous waste identified or listed pursuant to
32 subdivision (2), subsection (a), section six of this article,
33 or produced from any hazardous waste identified or
34 listed pursuant to section six;

35 (9) "Hazardous waste management" means the syste-
36 matic control of the collection, source separation,
37 storage, transportation, processing, treatment, recovery
38 and disposal of hazardous wastes;

39 (10) "Land disposal" means any placement of hazard-
40 ous waste in a landfill, surface impoundment, waste pile,
41 injection well, land treatment facility, salt dome
42 formation, salt bed formation, or underground mine or
43 cave;

44 (11) "Manifest" means the form used for identifying
45 the quantity, composition and the origin, routing and
46 destination of hazardous waste during its transportation
47 from the point of generation to the point of disposal,
48 treatment or storage;

49 (12) "Person" means any individual, trust, firm, joint
50 stock company, public, private or government corpora-
51 tion, partnership, association, state or federal agency,
52 the United States government, this state or any other

53 state, municipality, county commission or any other
54 political subdivision of a state or any interstate body;

55 (13) "Resource Conservation and Recovery Act"
56 means the federal Resource Conservation and Recovery
57 Act of 1976, 90 Stat. 2806, as amended;

58 (14) "Storage" means the containment of hazardous
59 waste, either on a temporary basis or for a period of
60 years, in such a manner as not to constitute disposal of
61 such hazardous waste;

62 (15) "Subtitle C" means Subtitle C of the Resource
63 Conservation and Recovery Act;

64 (16) "Treatment" means any method, technique or
65 process, including neutralization, designed to change the
66 physical, chemical or biological character or composi-
67 tion of any hazardous waste so as to neutralize such
68 waste or so as to render such waste nonhazardous, safer
69 for transport, amenable to recovery, amenable to storage
70 or reduced in volume. Such term includes any activity
71 or processing designed to change the physical form or
72 chemical composition of hazardous waste so as to render
73 it nonhazardous;

74 (17) "Waste" means any garbage, refuse, sludge from
75 a waste treatment plant, water supply treatment plant
76 or air pollution control facility and other discarded
77 material including solid, liquid, semisolid or contained
78 gaseous material resulting from industrial, commercial,
79 mining and agricultural operations, and from commun-
80 ity activities, but does not include solid or dissolved
81 material in domestic sewage, or solid or dissolved
82 materials in irrigation return flows or industrial
83 discharges which are point sources subject to permits
84 under section 402 of the federal Water Pollution Control
85 Act, as amended, or source, special nuclear or by-
86 product material as defined by the federal Atomic
87 Energy Act of 1954, as amended.

**§20-5E-4. Designation of department of natural resources
as the state hazardous waste management
lead agency.**

1 The department of natural resources is hereby

2 designated as the hazardous waste management lead
3 agency for this state for purposes of Subtitle C of the
4 Resource Conservation and Recovery Act, and is hereby
5 authorized to take all action necessary or appropriate to
6 secure to this state the benefits of said legislation. In
7 carrying out the purposes of this article, the director is
8 hereby authorized to cooperate with the federal enviro-
9 nmental protection agency and other agencies of the
10 federal government, this state and other states, and
11 other interested persons in all matters relating to
12 hazardous waste management.

**§20-5E-5. Powers and duties of director; integration with
other acts; establishment of study of hazard-
ous waste management.**

1 (a) In addition to all other powers and duties pres-
2 cribed in this article or otherwise by law, and unless
3 otherwise specifically set forth in this article, the
4 director shall perform any and all acts necessary to
5 carry out the purposes and requirements of Subtitle C
6 of the Resource Conservation and Recovery Act as of the
7 effective date of this article.

8 (b) The director shall integrate all provisions of this
9 article for purposes of administration and enforcement
10 and shall avoid duplication to the maximum extent
11 practicable, with the appropriate provisions of the water
12 pollution control act, article five-a of this chapter; the
13 surface mining and reclamation act, article six of this
14 chapter; the coal refuse disposal control act, article six-
15 c of this chapter; the air pollution control act, article
16 twenty, chapter sixteen of this code; the oil and gas laws
17 of article four, chapter twenty-two of this code; the
18 public health laws, chapter sixteen of this code; the dam
19 control act, article five-d of this chapter; the pesticide
20 use and application act of 1975, article sixteen-b,
21 chapter nineteen of this code; and the pesticide act of
22 1961, article sixteen-a, chapter nineteen of this code.

23 (c) The director may enter into any agreements,
24 including reimbursement for services rendered, con-
25 tracts or cooperative arrangements, under such terms
26 and conditions as he deems appropriate, with other state

27 agencies, educational institutions or other organizations
28 and individuals as necessary to implement the provi-
29 sions of this article.

30 (d) The director shall cooperate with and may receive
31 and expend money from the federal government and
32 other sources.

33 (e) Within twelve months after the effective date of
34 this article, the director, or upon designation by the
35 director, the chief, shall conduct and publish a study of
36 hazardous waste management in this state which shall
37 include, but not be limited to:

38 (1) A description of the sources of hazardous waste
39 generation within the state, including the types and
40 quantities of such wastes;

41 (2) A description of current hazardous waste manage-
42 ment practices and costs, including treatment, storage
43 and disposal within the state; and

44 (3) An inventory of existing and abandoned hazardous
45 waste treatment, storage and disposal sites.

46 (f) The director, or upon designation by the director,
47 the chief, in preparing the study provided for in
48 subsection (e) of this section may (1) require any owner
49 or operator of a storage, treatment or disposal facility,
50 or site, or any transporter or generator of hazardous
51 wastes to furnish or permit access to any and all
52 information that may reasonably be required to fulfill
53 the duty imposed upon him in subsection (e) of this
54 section, and (2) may issue subpoenas or subpoena duces
55 tecum to compel the production of information regard-
56 ing the location of any existing or abandoned hazardous
57 waste treatment, disposal or storage site as well as
58 production of information regarding quantity, quality
59 and hazardous waste management practices from any
60 generator or transporter of hazardous waste or any
61 owner or operator of an existing or abandoned hazard-
62 ous waste treatment, storage or disposal site.

63 (g) The director, or upon designation by the director,
64 the chief, shall (1) encourage, participate in and conduct
65 an ongoing investigation and analysis of methods,

66 incentives, technologies of source reduction, reuse,
67 recycling or recovery of potentially hazardous waste and
68 a strategy for encouraging the utilization or reduction
69 of hazardous waste, and (2) investigate the feasibility of
70 operating an information clearinghouse for hazardous
71 wastes.

72 (h) The director, or upon designation by the director,
73 the chief, shall provide for the continuing education and
74 training of appropriate department personnel in mat-
75 ters of hazardous waste management.

§20-5E-6. Promulgation of regulations by director.

1 (a) The director has overall responsibility for the
2 promulgation of rules and regulations under this article.
3 Within six months of the effective date of this article the
4 director shall promulgate the following rules and
5 regulations, in consultation with the department of
6 health, the air pollution control commission, the office
7 of emergency services, the public service commission,
8 the state fire marshal, the department of public safety,
9 the department of highways, the department of agricul-
10 ture, the water resources board and the department of
11 mines office of oil and gas. In promulgating and revising
12 such rules and regulations the director shall comply
13 with the provisions of chapter twenty-nine-a of this code,
14 shall avoid duplication to the maximum extent practi-
15 cable with the appropriate provisions of the acts and
16 laws set out in subsection (b), section five of this article
17 and shall be consistent with but no more expansive in
18 coverage nor more stringent in effect than the rules and
19 regulations promulgated by the federal environmental
20 protection agency pursuant to the Resource Conserva-
21 tion and Recovery Act:

22 (1) Rules and regulations establishing a plan for the
23 safe and effective management of hazardous wastes
24 within the state;

25 (2) Rules and regulations establishing criteria for
26 identifying the characteristics of hazardous waste,
27 identifying the characteristics of hazardous waste and
28 listing particular hazardous wastes which are subject to
29 the provisions of this article: *Provided, That:*

30 (A) Each waste listed below shall, except as provided
31 in paragraph (B) of this subdivision, be subject only to
32 regulation under other applicable provisions of federal
33 or state law in lieu of this article until proclamation by
34 the governor finding that at least six months have
35 elapsed since the date of submission of the applicable
36 study required to be conducted under section 8002 of the
37 federal Solid Waste Disposal Act, as amended, and that
38 regulations have been promulgated with respect to such
39 wastes in accordance with section 3001 (b)(3)(C) of the
40 Resource Conservation and Recovery Act, and finding in
41 the case of the wastes identified in subparagraph (iv) of
42 this paragraph that the regulation of such wastes have
43 been authorized by an act of Congress in accordance
44 with section 3001 (b)(2) of the Resource Conservation
45 and Recovery Act:

46 (i) Fly ash waste, bottom ash waste, slag waste and
47 flue gas emission control waste generated primarily
48 from the combustion of coal or other fossil fuels;

49 (ii) Solid waste from the extraction, beneficiation and
50 processing of ores and minerals, including phosphate
51 rock and overburden from the mining of uranium ore;

52 (iii) Cement kiln dust waste; and

53 (iv) Drilling fluids, produced waters and other wastes
54 associated with the exploration, development or produc-
55 tion of crude oil or natural gas or geothermal energy.

56 (B) Owners and operators of disposal sites for wastes
57 listed in paragraph (A) of this subdivision may be
58 required by the director of the department of natural
59 resources through regulation prescribed under author-
60 ity of this section:

61 (i) As to disposal sites for such wastes which are to
62 be closed, to identify the locations of such sites through
63 surveying, platting or other measures, together with
64 recordation of such information on the public record, to
65 assure that the locations where such wastes are disposed
66 of are known and can be located in the future; and

67 (ii) To provide chemical and physical analysis and
68 composition of such wastes, based on available informa-
69 tion, to be placed on the public record.

70 (3) Rules and regulations establishing such standards
71 applicable to generators of hazardous waste identified
72 or listed under this article as may be necessary to
73 protect public health and safety and the environment,
74 which standards shall establish requirements respecting
75 (A) record keeping practices that accurately identify
76 the quantities of such hazardous waste generated, the
77 constituents thereof which are significant in quantity or
78 in potential harm to human health or the environment
79 and the disposition of such wastes, (B) labeling practices
80 for any containers used for the storage, transport or
81 disposal of such hazardous waste such as will identify
82 accurately such waste, (C) use of appropriate containers
83 for such hazardous waste, (D) furnishing of information
84 on the general chemical composition of such hazardous
85 wastes to persons transporting, treating, storing or
86 disposing of such wastes, (E) use of a manifest system
87 and any other reasonable means necessary to assure that
88 all such hazardous waste generated is designated for
89 treatment, storage or disposal in, and arrives at
90 treatment, storage or disposal facilities (other than
91 facilities on the premises where the waste is gener-
92 ated) with respect to which permits have been issued
93 which are required (1) by this article or any rule and
94 regulation required by this article to be promulgated;
95 (2) by Subtitle C of the Resource Conservation and
96 Recovery Act; (3) by the laws of any other state which
97 has an authorized hazardous waste program pursuant
98 to section 3006 of the Resource Conservation and
99 Recovery Act; or (4) by Title I of the federal Marine
100 Protection, Research and Sanctuaries Act, and (F) the
101 submission of reports to the director at such times as
102 the director deems necessary setting out the quantities
103 of hazardous wastes identified or listed under this
104 article that the generator has generated during a
105 particular time period, and the disposition of all such
106 hazardous waste;

107 (4) Rules and regulations establishing such perfor-

108 mance standards applicable to owners and operators of
109 facilities for the treatment, storage or disposal of
110 hazardous waste identified or listed under this article
111 as may be necessary to protect public health and safety
112 and the environment, which standards shall, where
113 appropriate, distinguish in such standards between
114 requirements appropriate for new facilities and for
115 facilities in existence on the date of promulgation of
116 such rules and regulations and shall include, but need
117 not be limited to, requirements respecting:
118 (A) Maintaining records of all hazardous wastes iden-
119 tified or listed under this article which are treated,
120 stored or disposed of, as the case may be, and the
121 manner in which such wastes were treated, stored or
122 disposed of; (B) satisfactory reporting, monitoring and
123 inspection and compliance with the manifest system
124 referred to in subdivision (3) of subsection (a) of this
125 section; (C) treatment, storage or disposal of all such
126 waste received by the facility pursuant to such operating
127 methods, techniques and practices as may be satisfac-
128 tory to the director; (D) the location, design and
129 construction of such hazardous waste treatment, dispo-
130 sal or storage facilities; (E) contingency plans for
131 effective action to minimize unanticipated damage from
132 any treatment, storage or disposal of any such hazardous
133 waste; (F) the maintenance of operation of such facili-
134 ties and requiring such additional qualifications as to
135 ownership, continuity of operation, training for person-
136 nel and financial responsibility as may be necessary or
137 desirable; however, no private entity may be precluded
138 by reason of criteria established under this subsection
139 from the ownership or operation of facilities providing
140 hazardous waste treatment, storage or disposal services
141 where such entity can provide assurances of financial
142 responsibility and continuity of operation consistent
143 with the degree and duration of risks associated with the
144 treatment, storage or disposal of specified hazardous
145 waste; and (G) compliance with the requirements of
146 section eight of this article respecting permits for
147 treatment, storage or disposal;

148 (5) Rules and regulations specifying the terms and
149 conditions under which the chief shall issue, modify,

150 suspend, revoke or deny such permits as may be
151 required by this article;

152 (6) Rules and regulations for the establishment and
153 maintenance of records; the making of reports; the
154 taking of samples and the performing of tests and
155 analyses; the installing, calibrating, operating and
156 maintaining of monitoring equipment or methods; and
157 the providing of any other information as may be
158 necessary to achieve the purposes of this article;

159 (7) Rules and regulations establishing standards and
160 procedures for the certification of personnel at hazard-
161 ous waste treatment, storage or disposal facilities or
162 sites;

163 (8) Rules and regulations for public participation in
164 the implementation of this article;

165 (9) Rules and regulations establishing procedures and
166 requirements for the use of a manifest during the
167 transport of hazardous wastes;

168 (10) Rules and regulations establishing procedures
169 and requirements for the submission and approval of a
170 plan, applicable to owners or operators of hazardous
171 waste storage, treatment and disposal facilities, as
172 necessary or desirable for closure of the facility, post-
173 closure monitoring and maintenance, sudden and
174 accidental occurrences and nonsudden and accidental
175 occurrences;

176 (11) Rules and regulations establishing a schedule of
177 fees to recover the costs of processing permit applica-
178 tions and permit renewals;

179 (12) Rules and regulations, including exemptions and
180 variances, as appropriate, (A) establishing standards
181 and prohibitions relating to the management of hazard-
182 ous waste by land disposal methods; (B) establishing
183 standards and prohibitions relating to the land disposal
184 of liquid hazardous wastes or free liquids contained in
185 hazardous wastes and any other liquids which are not
186 hazardous wastes; (C) establishing standards applicable
187 to producers, distributors, or marketers of hazardous
188 waste fuels; (D) establishing such standards relating to

189 the management of used oil as may be necessary to
190 protect human health and the environment;
191 (E) establishing such standards relating to the manage-
192 ment of recycled oil as may be necessary to protect
193 human health and the environment; and (F) as are
194 otherwise necessary to allow the state to assume
195 primacy for the administration of the federal hazardous
196 waste management program under the Resource Con-
197 servation and Recovery Act and in particular, the
198 Hazardous and Solid Waste Amendments of 1984:
199 *Provided*, That such rules and regulations authorized by
200 this subdivision shall be consistent with but no more
201 expansive in coverage nor more stringent in effect than
202 rules and regulations promulgated by the federal
203 environmental protection agency under Subtitle C; and

204 (13) Such other rules and regulations as are necessary
205 to effectuate the purposes of this article.

206 (b) The rules and regulations required by this article
207 to be promulgated shall be reviewed and, where
208 necessary, revised not less frequently than every three
209 years. Additionally, the rules and regulations required
210 to be promulgated by this article shall be revised, as
211 necessary, within six months of the effective date of any
212 amendment of the Resource Conservation and Recovery
213 Act and within six months of the effective date of any
214 adoption or revision of rules and regulations required to
215 be promulgated by the Resource Conservation and
216 Recovery Act.

217 (c) Notwithstanding any other provision in this article
218 the director shall not promulgate rules and regulations
219 which are more properly within the jurisdiction and
220 expertise of any of the agencies empowered with rule-
221 making authority pursuant to section seven of this
222 article.

§20-5E-7. Authority and jurisdiction of other state agencies.

1 (a) The commissioner of highways, in consultation
2 with the director, and avoiding inconsistencies with and
3 avoiding duplication to the maximum extent practicable
4 with rules and regulations required to be promulgated

87 tencies with, and avoiding duplication to the maximum
88 extent practicable with rules and regulations required
89 to be promulgated pursuant to this article by the
90 director of the department of natural resources or any
91 other rule-making authority, shall promulgate rules and
92 regulations establishing standards applicable to gener-
93 ators and to permitting, licensing and operation of
94 facilities that treat, store or dispose of hazardous wastes
95 with infectious characteristics. Such rules and regula-
96 tions shall specify the terms, conditions and procedures
97 under which the state director of health or his autho-
98 rized representative shall issue, modify, suspend, revoke
99 or deny such permits required pursuant to those
100 regulations. Such permits as the board of health
101 regulations may require shall be issued by the state
102 director of health or his authorized representative. All
103 rules and regulations promulgated under this subsection
104 shall be promulgated in accordance with the provisions
105 of chapter twenty-nine-a of this code. Nothing in this
106 subsection shall be construed to diminish or alter the
107 authority of the air pollution control commission or its
108 director under this article or article twenty, chapter
109 sixteen of this code: *Provided*, That such permitting or
110 licensing required by this subsection shall be in addition
111 to those permits required by section eight of this article.
112 Such rules and regulations shall be consistent with this
113 article and shall be promulgated within six months of
114 the effective date of this article.

115 Any person aggrieved or adversely affected by an
116 order of the state director of health pursuant to this
117 article, or the denial or issuance of a permit, or the
118 failure or refusal of said director to act within a
119 reasonable time on an application for a permit or the
120 terms or conditions of a permit granted under the
121 provisions of this article, may appeal to a special
122 hearing examiner appointed to hear contested cases in
123 accordance with the provisions of chapter twenty-nine-
124 a of this code. All procedures for appeal and conduct of
125 hearings shall comply with rules and regulations
126 promulgated by the state board of health. Unless the
127 board of health directs otherwise, the appeal hearing
128 shall be held in the city of Charleston, Kanawha County.

129 In lieu of those enforcement and inspection powers
130 conferred upon the state director of health elsewhere by
131 law with respect to hazardous waste with infectious
132 characteristics, the state director of health shall have
133 the same enforcement and inspection powers as those
134 granted to the chief, his authorized representative or
135 agent or any authorized employee or agent of the
136 department of natural resources, as the case may be,
137 under sections eleven, twelve, thirteen, fourteen, fifteen,
138 sixteen and seventeen of this article.

139 (e) The director shall rely, to the maximum extent
140 practicable, on the department of health for expertise
141 on the adverse effects of toxic hazardous waste on
142 human health.

143 (f) The air pollution control commission, in consulta-
144 tion with the director, and avoiding inconsistencies with
145 and avoiding duplication to the maximum extent
146 practicable with rules and regulations required to be
147 promulgated pursuant to this article by the director or
148 any other rule-making authority, and in accordance
149 with the provisions of article twenty, chapter sixteen
150 and chapter twenty-nine-a of this code, shall promulgate
151 such rules and regulations establishing air pollution
152 performance standards and permit requirements and
153 procedures as may be necessary to comply with the
154 requirements of this article. Such permits shall be in
155 addition to those permits required by section eight of
156 this article. All rules and regulations promulgated
157 pursuant to this subsection shall be consistent with this
158 article.

159 The commission shall adopt regulations for the
160 monitoring and control of air emissions at hazardous
161 waste treatment storage and disposal facilities, includ-
162 ing, but not limited to, open tanks, surface impound-
163 ments and landfills, as may be necessary to protect
164 human health and the environment.

165 The commission shall promulgate rules and regula-
166 tions establishing standards applicable to the owners
167 and operators of facilities which burn, for purposes of
168 energy recovery, any fuel produced from any hazardous

169 waste identified or listed pursuant to subdivision (2),
170 subsection (a), section six of this article or which is
171 produced from any hazardous waste identified or listed
172 pursuant to subdivision (2), subsection (a), section six of
173 this article and any other material, as may be necessary
174 to protect human health and the environment: *Provided*,
175 That such rules and regulations shall be consistent with
176 Subtitle C.

177 With respect to this article, and any rules or regula-
178 tions promulgated pursuant thereto, the director of the
179 air pollution control commission has the same enforce-
180 ment and inspection powers as those of the chief under
181 sections eleven, twelve, thirteen, fourteen, fifteen,
182 sixteen and seventeen of this article: *Provided*, That no
183 action for penalties may be initiated by the director of
184 the air pollution control commission without the
185 approval of that commission. Any person aggrieved or
186 adversely affected by an order of the director of the air
187 pollution control commission made and entered in
188 accordance with the provisions of this article, or by the
189 failure or refusal of said director to act within a
190 reasonable time on an application for a permit or by the
191 issuance or denial of or by the terms and conditions of
192 a permit granted under the provisions of this article,
193 may appeal to the air pollution control commission in
194 accordance with the procedure set forth in section six,
195 article twenty, chapter sixteen of this code, and orders
196 made and entered by said commission shall be subject
197 to judicial review in accordance with the procedures set
198 forth in section seven, article twenty, chapter sixteen of
199 this code, except that as to cases involving an order
200 granting or denying an application for a permit,
201 revoking or suspending a permit or approving or
202 modifying the terms and conditions of a permit or the
203 failure to act within a reasonable time on an application
204 for a permit, the petition for judicial review shall be
205 filed in the circuit court of Kanawha County.

206 (g) The director of the department of natural resour-
207 ces has exclusive responsibility for carrying out any
208 requirement of this article with respect to coal mining
209 wastes or overburden for which a permit is issued under

210 the surface coal mining and reclamation act of 1980,
211 article six of this chapter.

212 (h) To the extent that this article relates to activities
213 with respect to oil and gas wells, liquid injection wells
214 and waste disposal wells now regulated by articles four,
215 four-b and seven, chapter twenty-two of this code, the
216 administrator of the office of oil and gas and the shallow
217 gas-well review board has the jurisdiction with respect
218 to the regulation of such activities and shall promulgate
219 such rules and regulations as may be necessary to
220 comply with the requirements of this article: *Provided*,
221 That nothing in this subsection may be construed to
222 diminish or alter the authority and responsibility of the
223 chief or the water resources board under articles five
224 and five-a, chapter twenty of this code.

225 In lieu of those enforcement and inspection powers
226 conferred upon the administrator of the office of oil and
227 gas and the shallow gas-well review board elsewhere by
228 law, with respect to hazardous wastes, the administrator
229 of the office of oil and gas and the shallow gas-well
230 review board have the same enforcement and inspection
231 powers as those granted to the chief, his authorized
232 representative or agent or any authorized employee or
233 agent of the department of natural resources, as the case
234 may be, under sections eleven, twelve, thirteen, fourteen,
235 fifteen, sixteen and seventeen of this article.

236 (i) The water resources board, in consultation with the
237 director, and avoiding inconsistency with and avoiding
238 duplication to the maximum extent practicable with
239 rules and regulations required to be promulgated
240 pursuant to this article by the director or any other rule-
241 making authority, and in accordance with the provisions
242 of chapter twenty-nine-a of this code, shall, as necessary,
243 promulgate rules and regulations governing discharges
244 into the waters of this state of hazardous waste resulting
245 from the treatment, storage or disposal of hazardous
246 waste as may be required by this article. Such rules and
247 regulations shall be consistent with this article.

248 (j) All rules and regulations promulgated pursuant to
249 this section shall be consistent with rules and regula-

250 tions promulgated by the federal environmental protec-
251 tion agency pursuant to the Resource Conservation and
252 Recovery Act.

253 (k) The director shall submit his written comments to
254 the legislative rule-making review committee regarding
255 all rules and regulations promulgated pursuant to this
256 article.

§20-5E-8a. Corrective action.

1 (a) All permits issued after the date the state is
2 delegated authority by the federal environmental
3 protection agency to administer the portion of the
4 federal hazardous waste program covered under the
5 Hazardous and Solid Waste Amendments of 1984 shall
6 contain conditions requiring corrective action for all
7 releases of hazardous waste or constituents from any
8 solid waste management unit at a treatment, storage or
9 disposal facility seeking a permit under this article
10 regardless of the time at which waste was placed in such
11 unit. Permits issued under this article shall contain
12 schedules of compliance for such corrective action
13 (where such corrective action cannot be completed prior
14 to issuance of the permit) and assurances of financial
15 responsibility for completing such corrective action.

16 (b) The director shall amend the standards under
17 subdivision (4), subsection (a), section six of this article,
18 regarding corrective action required at facilities for the
19 treatment, storage, or disposal of hazardous waste listed
20 or identified in rules and regulations promulgated
21 pursuant to subdivision (2), subsection (a), section six of
22 this article, to require that corrective action be taken
23 beyond the facility boundary where necessary to protect
24 human health and the environment unless the owner or
25 operator of the facility concerned demonstrates to the
26 satisfaction of the director that, despite the owner or
27 operator's best efforts, the owner or operator was unable
28 to obtain the necessary permission to undertake such
29 action. Such regulations shall take effect immediately
30 upon promulgation, and shall apply to:

31 (1) All facilities operating under permits issued under
32 subdivision (4), subsection (a), section six of this article;
33 and

34 (2) All landfills, surface impoundments and waste pile
35 units (including any new units, replacement of existing
36 units or lateral expansions of existing units) which
37 receive hazardous waste after the twenty-sixth day of
38 July, one thousand nine hundred eighty-two. Pending
39 promulgation of such regulations the director shall issue
40 corrective action orders for facilities referred to in
41 subdivisions (1) and (2) above on a case-by-case basis
42 consistent with the purposes of this subsection.

§20-5E-14. Enforcement orders; hearings.

1 (a) If the chief, upon inspection, investigation or
2 through other means observes, discovers or learns of a
3 violation of the provisions of this article, any permit,
4 order or rules or regulations issued or promulgated
5 hereunder, he may:

6 (1) Issue an order stating with reasonable specificity
7 the nature of the violation and requiring compliance
8 immediately or within a specified time. An order under
9 this section includes, but is not limited to, any or all of
10 the following: Orders suspending, revoking or modifying
11 permits, orders requiring a person to take remedial
12 action or cease and desist orders;

13 (2) Seek an injunction in accordance with subsection
14 (c) of section sixteen of this article;

15 (3) Institute a civil action in accordance with subsec-
16 tion (c) of section sixteen of this article; or

17 (4) Request the attorney general, or the prosecuting
18 attorney of the county in which the alleged violation
19 occurred, to bring a criminal action in accordance with
20 section fifteen of this article.

21 (b) Any person issued a cease and desist order may
22 file a notice of request for reconsideration with the chief
23 not more than seven days from the issuance of such
24 order and shall have a hearing before the chief contest-
25 ing the terms and conditions of such order within ten
26 days of the filing of such notice of a request for
27 reconsideration. The filing of a notice of request for

28 reconsideration shall not stay or suspend the execution
29 or enforcement of such cease and desist order.

§20-5E-16. Civil penalties and injunctive relief.

1 (a) (1) Any person who violates any provision of this
2 article, any permit or any rule, regulation or order
3 issued pursuant to this article shall be subject to a civil
4 administrative penalty, to be levied by the director, of
5 not more than seventy-five hundred dollars for each day
6 of such violation, not to exceed a maximum of twenty-
7 two thousand five hundred dollars. In assessing any such
8 penalty, the director shall take into account the
9 seriousness of the violation and any good faith efforts to
10 comply with applicable requirements as well as any
11 other appropriate factors as may be established by the
12 director by rules and regulations promulgated pursuant
13 to this article and article three, chapter twenty-nine-a
14 of this code. No assessment shall be levied pursuant to
15 this subsection until after the alleged violator has been
16 notified by certified mail or personal service. The notice
17 shall include a reference to the section of the statute,
18 rule, regulation, order or statement of permit conditions
19 that was allegedly violated, a concise statement of the
20 facts alleged to constitute the violation, a statement of
21 the amount of the administrative penalty to be imposed
22 and a statement of the alleged violator's right to an
23 informal hearing. The alleged violator shall have twenty
24 calendar days from receipt of the notice within which
25 to deliver to the director a written request for an
26 informal hearing. If no hearing is requested, the notice
27 shall become a final order after the expiration of the
28 twenty-day period. If a hearing is requested, the
29 director shall inform the alleged violator of the time and
30 place of the hearing. The director may appoint an
31 assessment officer to conduct the informal hearing and
32 then make a written recommendation to the director
33 concerning the assessment of a civil administrative
34 penalty. Within thirty days following the informal
35 hearing, the director shall issue and furnish to the
36 violator a written decision, and the reasons therefor,
37 concerning the assessment of a civil administrative
38 penalty. Within thirty days after notification of the

39 director's decision, the alleged violator may request a
40 formal hearing before the water resources board in
41 accordance with the provisions of section nineteen of this
42 article. The authority to levy an administrative penalty
43 shall be in addition to all other enforcement provisions
44 of this article and the payment of any assessment shall
45 not be deemed to affect the availability of any other
46 enforcement provision in connection with the violation
47 for which the assessment is levied: *Provided*, That no
48 combination of assessments against a violator under this
49 section shall exceed twenty-five thousand dollars per
50 day of each such violation: *Provided, however*, That any
51 violation for which the violator has paid a civil administrative penalty assessed under this section shall not
52 be the subject of a separate civil penalty action under
53 this article to the extent of the amount of the civil
54 administrative penalty paid. All administrative penalties shall be levied in accordance with rules and
55 regulations issued pursuant to subsection (a) of section
56 six of this article. The net proceeds of assessments
57 collected pursuant to this subsection shall be deposited
58 in the hazardous waste emergency response fund
59 established pursuant to section three, article five-g of
60 this chapter.

63 (2) No assessment levied pursuant to subdivision (1),
64 subsection (a) above shall become due and payable until
65 the procedures for review of such assessment as set out
66 in said subsection have been completed.

67 (b) Any person who violates any provision of this
68 article, any permit or any rule, regulation or order
69 issued pursuant to this article shall be subject to a civil
70 penalty not to exceed twenty-five thousand dollars for
71 each day of such violation, which penalty shall be
72 recovered in a civil action either in the circuit court
73 wherein the violation occurs or in the circuit court of
74 Kanawha County.

75 (c) The chief may seek an injunction, or may institute
76 a civil action against any person in violation of any
77 provisions of this article or any permit, rule, regulation
78 or order issued pursuant to this article. In seeking an
79 injunction, it is not necessary for the chief to post bond

80 nor to allege or prove at any stage of the proceeding that
81 irreparable damage will occur if the injunction is not
82 issued or that the remedy at law is inadequate. An
83 application for injunctive relief or a civil penalty action
84 under this section may be filed and relief granted
85 notwithstanding the fact that all administrative remedies
86 provided for in this article have not been exhausted
87 or invoked against the person or persons against whom
88 such relief is sought.

89 (d) Upon request of the chief, the attorney general, or
90 the prosecuting attorney of the county in which the
91 violation occurs, shall assist the chief in any civil action
92 under this section.

93 (e) In any action brought pursuant to the provisions
94 of this section, the state, or any agency of the state which
95 prevails, may be awarded costs and reasonable attorney's
96 fees.

§20-5E-24. Financial responsibility provisions.

1 (1) Financial responsibility required by subdivision
2 (4), subsection (a), section six of this article may be
3 established in accordance with regulations promulgated
4 by the director by any one, or any combination, of the
5 following: Insurance, guarantee, surety bond, letter of
6 credit or qualification as a self-insurer. In promulgating
7 requirements under this section, the director is authorized
8 to specify policy or other contractual terms,
9 conditions or defenses which are necessary or are
10 unacceptable in establishing such evidence of financial
11 responsibility in order to effectuate the purposes of this
12 act.

13 (2) In any case where the owner or operator is in
14 bankruptcy reorganization, or arrangement pursuant to
15 the federal bankruptcy code or where (with reasonable
16 diligence) jurisdiction in any state court or any federal
17 court cannot be obtained over an owner or operator
18 likely to be solvent at the time of judgment, any claim
19 arising from conduct for which evidence of financial
20 responsibility must be provided under this section may
21 be asserted directly against the guarantor providing
22 such evidence of financial responsibility. In the case of

23 any action pursuant to this subsection, such guarantor
24 shall be entitled to invoke all rights and defenses which
25 would have been available to the owner or operator if
26 any action had been brought against the owner or
27 operator by the claimant and which would have been
28 available to the guarantor if an action had been brought
29 against the guarantor by the owner or operator.

30 (3) The total liability of any guarantor shall be limited
31 to the aggregate amount which the guarantor has
32 provided as evidence of financial responsibility to the
33 owner or operator under this act. Nothing in this
34 subsection shall be construed to limit any other state or
35 federal statutory contractual or common law liability of
36 a guarantor to its owner or operator including, but not
37 limited to, the liability of such guarantor for bad faith
38 either in negotiating or in failing to negotiate the
39 settlement of any claim. Nothing in this subsection shall
40 be construed to diminish the liability of any person
41 under section 107 or 111 of the Comprehensive Environmental
42 Response Compensation and Liability Act of
43 1980 or other applicable law.

44 (4) For the purposes of this section, the term "guaran-
45 tor" means any person other than the owner or operator
46 who provides evidence of financial responsibility for an
47 owner or operator under this section.

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§20-5F-2. Definitions.

§20-5F-6. Orders, inspections and enforcement; civil and criminal penalties.

§20-5F-2. Definitions.

1 Unless the context clearly requires a different
2 meaning, as used in this article the terms:

3 (a) "Approved solid waste facility" means a solid
4 waste facility or practice which has a valid permit
5 under this article;

6 (b) "Chief" shall mean the chief of the division of
7 waste management of the department of natural
8 resources;

9 (c) "Commercial solid waste facility" means any solid

10 waste facility which accepts solid waste generated by
11 sources other than the owner or operator of the facility
12 and shall not include an approved solid waste facility
13 owned and operated by a person for the sole purpose of
14 disposing of solid wastes created by that person or such
15 person and other persons on a cost-sharing or nonprofit
16 basis;

17 (d) "Department" shall mean the department of
18 natural resources;

19 (e) "Director" shall mean the director of the depart-
20 ment of natural resources;

21 (f) "Open dump" means any solid waste disposal
22 which does not have a permit under this article, or is
23 in violation of state law, or where solid waste is disposed
24 in a manner that does not protect the environment;

25 (g) "Person," "persons" or "applicant" shall mean any
26 industrial user, public or private corporation, institu-
27 tion, association, firm or company organized or existing
28 under the laws of this or any other state or country; state
29 of West Virginia; governmental agency, including
30 federal facilities; political subdivision; county commis-
31 sion; municipal corporation; industry; sanitary district;
32 public service district; drainage district; soil conserva-
33 tion district; watershed improvement district; partner-
34 ship; trust; estate; person or individual; group of persons
35 or individuals acting individually or as a group; or any
36 legal entity whatever;

37 (h) "Sludge" means any solid, semisolid, residue or
38 precipitate, separated from or created by a municipal,
39 commercial or industrial waste treatment plant, water
40 supply treatment plant or air pollution control facility
41 or any other such waste having similar origin;

42 (i) "Solid waste" means any garbage, paper, litter,
43 refuse, cans, bottles, sludge from a waste treatment
44 plant, water supply treatment plant or air pollution
45 control facility, other discarded material, including
46 carcasses of any dead animal or any other offensive or
47 unsightly matter, solid, liquid, semisolid or contained
48 liquid or gaseous material resulting from industrial,

49 commercial, mining or from community activities but
50 does not include solid or dissolved material in sewage,
51 or solid or dissolved materials in irrigation return flows
52 or industrial discharges which are point sources and
53 have permits under article five-a, chapter twenty of the
54 code, or source, special nuclear or by-product material
55 as defined by the Atomic Energy Act of 1954, as
56 amended, or a hazardous waste either identified or
57 listed under article five-e, chapter twenty of the code or
58 refuse, slurry, overburden or other wastes or material
59 resulting from coal-fired electric power generation, the
60 exploration, development, production, storage and
61 recovery of coal, oil and gas, and other mineral
62 resources placed or disposed of at a facility which is
63 regulated under chapter twenty-two, twenty-two-a, or
64 twenty-two-b of the code, so long as such placement or
65 disposal is in conformance with a permit issued
66 pursuant to such chapters; "solid waste" shall not
67 include materials which are recycled by being used or
68 reused in an industrial process to make a product, as
69 effective substitute for commercial products, or are
70 returned to the original process as a substitute for raw
71 material feed stock;

72 (j) "Solid waste disposal" means the practice of
73 disposing solid waste including placing, depositing,
74 dumping or throwing or causing to be placed, deposited,
75 dumped or thrown any solid waste;

76 (k) "Solid waste disposal shed" means the geographi-
77 cal area which the resource recovery—solid waste
78 disposal authority designates and files in the state
79 register pursuant to section eight, article twenty-six,
80 chapter sixteen of this code; and

81 (l) "Solid waste facility" means any system, facility,
82 land, contiguous land, improvements on the land,
83 structures or other appurtenances or methods used for
84 processing, recycling or disposing of solid waste,
85 including landfills, transfer stations, resource recovery
86 facilities and other such facilities not herein specified.

§20-5F-6. Orders, inspections and enforcement; civil and criminal penalties.

1 (a) If the director or chief, upon inspection, investiga-
2 tion or through other means observes, discovers or
3 learns of a violation of this article, its rules, article five-
4 a of this chapter or its rules, or any permit or order
5 issued under this article, he may:

6 (1) Issue an order stating with reasonable specificity
7 the nature of the alleged violation and requiring
8 compliance immediately or within a specified time. An
9 order under this section includes, but is not limited to,
10 any or all of the following: orders suspending, revoking
11 or modifying permits, orders requiring a person to take
12 remedial action or cease and desist orders;

13 (2) Seek an injunction in accordance with subsection
14 (e) of this section;

15 (3) Institute a civil action in accordance with subsec-
16 tion (e) of this section; or

17 (4) Request the attorney general, or the prosecuting
18 attorney of the county wherein the alleged violation
19 occurred, to bring a criminal action in accordance with
20 subsection (b) of this section.

21 (b) Any person who willfully or negligently violates
22 the provisions of this article, any permit or any rule,
23 regulation or order issued pursuant to this article shall
24 be subject to the same criminal penalties as set forth in
25 section nineteen, article five-a, chapter twenty of the
26 code.

27 (c) (1) Any person who violates any provision of this
28 article, any permit or any rule, regulation or order
29 issued pursuant to this article shall be subject to civil
30 administrative penalty, to be levied by the director, of
31 not more than five thousand dollars for each day of such
32 violation, not to exceed a maximum of twenty thousand
33 dollars. In assessing any such penalty, the director shall
34 take into account the seriousness of the violation and any
35 good faith efforts to comply with the applicable
36 requirements as well as any other appropriate factors
37 as may be established by the director by rules and
38 regulations promulgated pursuant to this article and
39 article three, chapter twenty-nine-a of the code. No

40 assessment shall be levied pursuant to this subsection
41 until after the alleged violator has been notified by
42 certified mail or personal service. The notice shall
43 include a reference to the section of the statute, rule,
44 regulation, order or statement of permit conditions that
45 was allegedly violated, a concise statement of the facts
46 alleged to constitute the violation, a statement of the
47 amount of the administrative penalty to be imposed and
48 a statement of the alleged violator's right to an informal
49 hearing. The alleged violator shall have twenty calendar
50 days from receipt of the notice within which to deliver
51 to the director a written request for an informal
52 hearing. If no hearing is requested, the notice shall
53 become a final order after the expiration of the twenty-
54 day period. If a hearing is requested, the director shall
55 inform the alleged violator of the time and place of the
56 hearing. The director may appoint an assessment officer
57 to conduct the informal hearing and then make a
58 written recommendation to the director concerning the
59 assessment of a civil administrative penalty. Within
60 thirty days following the informal hearing, the director
61 shall issue and furnish to the alleged violator a written
62 decision, and the reasons therefor, concerning the
63 assessment of a civil administrative penalty. Within
64 thirty days after notification of the director's decision,
65 the alleged violator may request a formal hearing before
66 the water resources board in accordance with the
67 provisions of section seven of this article. The authority
68 to levy a civil administrative penalty shall be in addition
69 to all other enforcement provisions of this article and the
70 payment of any assessment shall not be deemed to affect
71 the availability of any other enforcement provision in
72 connection with the violation for which the assessment
73 is levied: *Provided*, That no combination of assessments
74 against a violator under this section shall exceed twenty-
75 five thousand dollars per day of each such violation:
76 *Provided, however*, That any violation for which the
77 violator has paid a civil administrative penalty assessed
78 under this section shall not be the subject of a separate
79 civil penalty action under this article to the extent of the
80 amount of the civil administrative penalty paid. All
81 administrative penalties shall be levied in accordance

82 with rules and regulations issued pursuant to subsection
83 (a) of section four of this article. The net proceeds of
84 assessments collected pursuant to this subsection shall
85 be deposited in the solid waste reclamation and environmental
86 response fund established in subdivision (3),
87 subsection (h), section five-a of this article.

88 (2) No assessment levied pursuant to subdivision (1),
89 subsection (c) above shall become due and payable until
90 the procedures for review of such assessment as set out
91 in said subsection have been completed.

92 (d) Any person who violates any provision of this
93 article, any permit or any rule, regulation or order
94 issued pursuant to this article shall be subject to a civil
95 penalty not to exceed twenty-five thousand dollars for
96 each day of such violation, which penalty shall be
97 recovered in a civil action either in the circuit court
98 wherein the violation occurs or in the circuit court of
99 Kanawha County.

100 (e) The director or chief may seek an injunction, or
101 may institute a civil action against any person in
102 violation of any provisions of this article or any permit,
103 rule, regulation or order issued pursuant to this article.
104 In seeking an injunction, it is not necessary for the
105 director or chief to post bond nor to allege or prove at
106 any state of the proceeding that irreparable damage will
107 occur if the injunction is not issued or that the remedy
108 at law is inadequate. An application for injunctive relief
109 or a civil penalty action under this section may be filed
110 and relief granted notwithstanding the fact that all
111 administrative remedies provided for in this article have
112 not been exhausted or invoked against the person or
113 persons against whom such relief is sought.

114 (f) Upon request of the director or chief, the attorney
115 general or the prosecuting attorney of the county in
116 which the violation occurs shall assist the director in any
117 civil action under this section.

118 (g) In any civil action brought pursuant to the
119 provisions of this section, the state, or any agency of the
120 state which prevails, may be awarded costs and
121 reasonable attorney's fees.

CHAPTER 149

(H. B. 2676—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request)

Clerk's Note: It has been determined that H. B. 2676, originally styled as Chapter 149, was enrolled and signed by the Governor in an incorrect form, certain amendments adopted by the Senate having been omitted from the original House Bill.

Therefore, the Governor not having received and signed a true and correct copy of the bill as passed by both houses, H. B. 2676 did not become law.

CHAPTER 150

(H. B. 2696—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-i, relating to the creation of the West Virginia water pollution control revolving fund; definitions; designation of department of natural resources as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency; disbursement of fund moneys; administration of the fund; annual audit; collection of money due to the fund; state construction grants program established; special fund created; promulgation of legislative rules: environmental review of funded projects; conflicting provisions.

Be it enacted by the Legislature of West Virginia:

That chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-i, to read as follows:

ARTICLE 5I. WATER POLLUTION CONTROL REVOLVING FUND ACT.

§20-5I-1. Definitions.

- §20-5I-2. Designation of department of natural resources as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency.
- §20-5I-3. West Virginia water pollution control revolving fund created; disbursement of fund moneys; administration of the fund.
- §20-5I-4. Annual audit.
- §20-5I-5. Collection of money due to the fund.
- §20-5I-6. State construction grants program established; special fund created.
- §20-5I-7. Environmental review of funded projects.
- §20-5I-8. Conflicting provisions.

§20-5I-1. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (a) "Authority" means the West Virginia water
4 development authority created in section four, article
5 five-c, chapter twenty of this code.

6 (b) "Cost" as applied to any project financed under the
7 provisions of this article means the total of all costs
8 incurred by a local government that are reasonable and
9 necessary for carrying out all works and undertakings
10 necessary or incident to the accomplishment of any
11 project including:

12 (1) Developmental, planning and feasibility studies,
13 surveys, plans and specifications;

14 (2) Architectural, engineering, financial, legal or
15 other special services;

16 (3) Acquisition of land and any buildings and im-
17 provements thereon, including the discharge of any
18 obligations of the sellers of such land, buildings or
19 improvements;

20 (4) Site preparation and development, including
21 demolition or removal of existing structures, construc-
22 tion and reconstruction, labor, materials, machinery and
23 equipment;

24 (5) The reasonable costs of financing incurred by the
25 local government in the course of the development of the
26 project, carrying charges incurred before placing the
27 project in service, interest on funds borrowed to finance
28 the project to a date subsequent to the estimated date

29 the project is to be placed in service, necessary expenses
30 incurred in connection with placing the project in
31 service, and the funding of accounts and reserves which
32 the authority may require; and

33 (6) Other items that the department of natural
34 resources determines to be reasonable and necessary.

35 (c) "Fund" means the state water pollution control
36 revolving fund created by this article.

37 (d) "Instrumentality" means the agency of state
38 government empowered with the primary responsibility
39 associated with water pollution control activities
40 regulating publicly-owned wastewater treatment
41 facilities.

42 (e) "Local government" means any county, city, town,
43 municipal corporation, authority, district, public service
44 district commission or political subdivision in West
45 Virginia.

46 (f) "Project" means any wastewater treatment facility
47 located or to be located in this state by a local govern-
48 ment and includes:

49 (1) Sewage and wastewater collection, treatment and
50 disposal facilities;

51 (2) Drainage facilities and projects;

52 (3) Administrative, maintenance, storage and labora-
53 tory facilities related to the facilities delineated in
54 subdivisions (1) and (2) of this subsection;

55 (4) Interests in land related to the facilities delineated
56 in subdivisions (1), (2) and (3) of this subsection; and

57 (5) Other projects allowable under federal law.

**§20-5I-2. Designation of department of natural resources
as state instrumentality for purposes of
capitalization agreements with the United
States environmental protection agency.**

1 The department of natural resources shall act as the
2 instrumentality that is empowered to enter into capital-
3 ization agreements with the United States environmen-

4 tal protection agency, to accept capitalization grant
5 awards made under Title 6 of the federal clean water
6 act, as amended, and to otherwise manage the fund
7 created pursuant to this article in accordance with the
8 requirements of said Title 6.

**§20-5I-3. West Virginia water pollution control revolving
fund created; disbursement of fund moneys;
administration of the fund.**

1 (a) Under the direction of the department of natural
2 resources, the West Virginia water development author-
3 ity shall establish, administer and manage a permanent
4 and perpetual fund, to be known as the "West Virginia
5 Water Pollution Control Revolving Fund." The fund
6 shall be comprised of moneys appropriated to said fund
7 by the Legislature, moneys allocated to the state by the
8 federal government expressly for the purposes of
9 establishing and maintaining a state water pollution
10 control revolving fund, all receipts from loans made
11 from the fund to local governments, all income from the
12 investment of moneys held in the fund, and all other
13 sums designated for deposits to the fund from any
14 source, public or private. Moneys in the fund shall be
15 used solely to make loans to local governments to finance
16 or refinance the costs of a project: *Provided, That*
17 moneys in the fund shall be utilized to defray the costs
18 incurred by the authority and the department of natural
19 resources in administering the provisions of this article.

20 (b) The director of the department of natural resour-
21 ces, in consultation with the authority, shall promulgate
22 rules in accordance with the provisions of chapter
23 twenty-nine-a of this code, to:

24 (1) Govern the disbursement of moneys from the fund;
25 and

26 (2) Establish a state water pollution control revolving
27 fund program to direct the distribution of loans from the
28 fund to particular local governments and establish the
29 interest rates and repayment terms of such loans.

30 (c) In order to carry out the administration and
31 management of the fund, the authority is authorized to

32 employ officers, employees, agents, advisers and consul-
33 tants, including attorneys, financial advisers, engineers,
34 other technical advisers and public accountants and,
35 notwithstanding any provisions of this code to the
36 contrary, to determine their duties and compensation
37 without the approval of any other agency or
38 instrumentality.

39 (d) The authority shall promulgate rules in accor-
40 dance with the provisions of chapter twenty-nine-a of
41 this code to govern the pledge of loans to secure bonds
42 of the authority.

43 (e) All moneys belonging to the fund shall be kept in
44 appropriate depositories and secured in conformance
45 with this code. Disbursements from the fund shall be
46 authorized for payment by the director of the authority
47 or his designee. Any depository or officer of such
48 depository to which moneys of the fund are paid shall
49 act as trustee of such moneys and shall hold and apply
50 them solely for the purposes for which said moneys are
51 provided under this article. Moneys in the fund shall not
52 be commingled with other money of the authority. If not
53 needed for immediate use or disbursement, moneys in
54 the fund may be invested or reinvested by the authority
55 in obligations or securities which are considered lawful
56 investments for public funds under this code.

§20-5I-4. Annual audit.

1 The authority shall cause an audit of its books and
2 accounts to be made at least once each fiscal year by
3 certified public accountants, and the cost thereof may
4 be defrayed as a part of the cost of construction of a
5 project or as an administrative expense under the
6 provisions of subsection (a), section three of this article.

§20-5I-5. Collection of money due to the fund.

1 In order to ensure the timely payment of all sums due
2 and owing to the fund under a revolving fund loan
3 agreement between the state and a local government,
4 and notwithstanding any provisions of this code to the
5 contrary, the authority shall have, and may, at its
6 option, exercise the following rights and remedies in the

7 event of any default by a local government under such
8 a loan agreement:

9 (a) The authority may directly impose, in its own
10 name and for its own benefit, service charges upon all
11 users of a project funded by a loan distributed to a local
12 government pursuant to this article, and may proceed
13 directly to enforce and collect such service charges,
14 together with all necessary costs of such enforcement
15 and collection.

16 (b) The authority may exercise, in its own name or in
17 the name of and as the agent for a particular local
18 government, all of the rights, powers and remedies of
19 the local government with respect to the project or
20 which may be conferred upon the local government by
21 statute, rule, regulation or judicial decision, including
22 all rights and remedies with respect to users of the
23 project funded by the loan distributed to that local
24 government pursuant to this article.

25 (c) The authority may, by civil action, mandamus or
26 other judicial or administrative proceeding, compel
27 performance by a local government of all of the terms
28 and conditions of the loan agreement between the state
29 and that local government including:

30 (1) The adjustment of service charges as required to
31 repay the loan or otherwise satisfy the terms of the loan
32 agreement;

33 (2) The enforcement and collection of service charges;
34 and

35 (3) The enforcement by the local government of all
36 rights and remedies conferred by statute, rule, regula-
37 tion or judicial decision.

38 The rights and remedies enumerated in this section
39 shall be in addition to rights and remedies conferred
40 upon the authority by law or pursuant to the loan
41 agreement.

**§20-5I-6. State construction grants program established;
special fund created.**

1 (a) The director of the department of natural resour-

2 ces shall promulgate rules in accordance with the
3 provisions of chapter twenty-nine-a of this code to
4 establish a state construction grants program that is
5 designed to complement and supplement the state water
6 pollution control revolving fund program established
7 pursuant to subsection (b), section three of this article.

8 (b) A special fund designated "The West Virginia
9 Construction Grants Fund" shall be established in the
10 state treasury on the first day of July, one thousand nine
11 hundred eighty-nine. The special fund shall be com-
12 prised of moneys appropriated to said fund by the
13 Legislature, assessments on existing wastewater treat-
14 ment facilities, and all other sums designated for deposit
15 to the special fund from any source, public or private:
16 *Provided*, That such assessments shall be made and
17 collected in accordance with fee schedules to be
18 established by legislative rules promulgated by the
19 director of the department of natural resources, in
20 accordance with chapter twenty-nine-a of this code, and
21 which rules shall provide that no such assessments may
22 be collected before the first day of July, one thousand
23 nine hundred ninety. Moneys in the special fund shall
24 be used solely for the state construction grants program
25 established under subsection (a) of this section:
26 *Provided, however*, That moneys in the special fund may
27 be utilized to defray the costs incurred by the depart-
28 ment of natural resources in administering the provi-
29 sions of this section.

§20-5I-7. Environmental review of funded projects.

1 (a) The department of natural resources shall conduct
2 an environmental review on each project funded under
3 this article. The director of the department of natural
4 resources shall promulgate rules in accordance with the
5 provisions of chapter twenty-nine-a of this code to
6 implement the environmental review of funded projects:
7 *Provided*, That said rules shall be consistent with the
8 rules and regulations promulgated by the United States
9 environmental protection agency pursuant to the federal
10 clean water act, as amended.

11 (b) The director of the department of natural resour-

12 ces is authorized to direct a local government, or its
13 agent, to implement all measures that, in the judgment
14 of the director, are necessary in order to mitigate or
15 prevent adverse impacts to the public health, safety or
16 welfare or to the environment that may result from a
17 project funded under this article. The director is further
18 authorized to require all projects to comply with all
19 other appropriate federal laws and regulations that are
20 required of such projects under the federal clean water
21 act, as amended.

§20-5I-8. Conflicting provisions.

1 The provisions of this article shall be liberally
2 construed to the end that its beneficial purposes may be
3 effectuated. Insofar as the provisions of this article are
4 inconsistent with the provisions of any other general,
5 special or local law, the provisions of this article shall
6 be controlling.

CHAPTER 151

(Com. Sub. for H. B. 2201—By Delegate Love)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to conservation officers employed by the department of natural resources; providing salary increases for conservation officers based on length of service.

Be it enacted by the Legislature of West Virginia:

That section one-a, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTORBOATING; WEST VIRGINIA LITTER CONTROL PROGRAM.

§20-7-1a. Conservation officers excluded from coverage of wage and hour laws; supplemental pay in lieu of overtime; regulation; salary increase based on length of service.

1 (a) The Legislature finds and declares that the
2 supreme court of appeals of West Virginia has held that
3 conservation officers are covered by the provisions of the
4 state wage and hour law, article five-c, chapter twenty-
5 one of this code. The Legislature further finds and
6 declares that because of the unique duties of conserva-
7 tion officers, it is not appropriate to apply said wage and
8 hour provisions to them. Accordingly, conservation
9 officers are hereby excluded from the provisions of said
10 wage and hour law and department of civil service
11 guidelines, rules or regulations relating thereto. They
12 shall be subject to duty whenever and wherever
13 required by the functions, services and needs of the
14 department.

15 The minimum workweek for conservation officers
16 shall be five eight hour days and the maximum number
17 of days and hours per day shall be unrestricted.
18 Conservation officers shall not be entitled to compensa-
19 tory time for days or hours worked in excess of the
20 minimum in a work day or week except a compensatory
21 day shall be granted for any holiday worked. In lieu of
22 any benefits to which they would have been entitled by
23 the coverage from which they are hereby excluded,
24 conservation officers, except those classified by the West
25 Virginia civil service system as conservation officer IV
26 and natural resources administrator, shall receive in
27 addition to their salaries an annual premium payment
28 of two thousand one hundred dollars which sum shall
29 be prorated and included in the payment of their salary
30 checks.

31 (b) Effective the first day of January, one thousand
32 nine hundred ninety, each conservation officer shall
33 receive and be entitled to an increase in salary based
34 on length of service, including that heretofore and
35 hereafter served as a conservation officer as follows: For
36 five years of service with the department, such conser-
37 vation officer shall receive a salary increase of three

38 hundred dollars per year payable during his next three
39 years of service and a like increase at three-year
40 intervals thereafter, with such increases to be cumulative: *Provided*, That for purposes of calculating such
41 salary increase, a maximum of twenty-five years of
42 service shall be applicable. Such salary increase shall be
43 based upon years of service as of the first day of July
44 of each year and shall not be recalculated until the first
45 day of July of the following year.

47 Conservation officers in service at the time the
48 amendment to this section becomes effective shall be
49 given credit for prior service and shall be paid such
50 salaries as the same length of service will entitle them
51 to receive under the provisions hereof.

52 (c) This section shall not apply to special or emer-
53 gency conservation officers appointed under the author-
54 ity of section one of this article.

CHAPTER 152

(H. B. 2569—By Delegate Schoonover)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-a, relating to making the payment of personal property taxes a prerequisite to application for certificate of number or renewal for motorboats; duties of assessors; and requiring the tax commissioner to compile schedule of motorboat values.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twelve-a, to read as follows:

ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTORBOATING; WEST VIRGINIA LITTER CONTROL PROGRAM.

§20-7-12a. Payment of personal property taxes prerequisite to application for certificate or renewal of number; duties of assessors; schedule of motorboat values.

1 Certificates of number and renewals therefor shall not
2 be issued or furnished by the department of motor
3 vehicles, or any other officer charged with such duty,
4 unless the applicant therefor, furnishes the receipt
5 hereinafter provided to show full payment of the
6 personal property taxes for the calendar year which
7 immediately precedes the calendar year in which
8 application is made on all motorboats which were listed
9 with the department of motor vehicles in the applicant's
10 name on the tax day for the former calendar year. If
11 the applicant contends that any motorboat so listed was
12 not subject to personal property taxation for that year,
13 he shall furnish such information and evidence as the
14 commissioner of motor vehicles may require to substantiate
15 his contention.

16 The assessor shall require any person having a duty
17 to make a return of property for taxation to him to
18 furnish information identifying each motorboat subject
19 to the numbering provisions of this article. When the
20 property taxes on any such motorboat have been paid,
21 the officer to whom the payment was made shall deliver
22 to the person paying such taxes a written or printed
23 receipt therefor, and shall retain for his records a
24 duplicate of such receipt. The assessor and sheriff,
25 respectively, shall see that the assessment records and
26 the receipts contain information adequately identifying
27 the motorboat as registered under the provisions of this
28 article. The officer receiving payment shall sign each
29 receipt in his own handwriting.

30 The assessors shall commence their duties hereunder
31 during the tax year one thousand nine hundred eighty-
32 nine and the department of motor vehicles shall
33 commence its duties hereunder as of the first day of
34 January, one thousand nine hundred ninety.

35 The state tax commissioner shall annually compile a
36 schedule of motorboat values, based on the lowest values

37 shown in a nationally accepted used motorboat guide,
38 which schedule shall be furnished to each assessor and
39 shall be used by him as a guide in placing the assessed
40 values on all motorboats in his county.

CHAPTER 153

(H. B. 2129—By Delegates Hatfield and White)

[Passed March 21, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to substituted consent for nursing home and personal care home health services by making applicable to prospective patients.

Be it enacted by the Legislature of West Virginia:

That section five-a, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5C. NURSING AND PERSONAL CARE HOMES.

§16-5C-5a. Substituted consent for nursing home and personal care home health care services.

1 (a) For purposes of this section, "physical or mental
2 incapacity" or like words shall mean the inability,
3 because of physical or mental impairment, of a nursing
4 home or personal care home patient or prospective
5 patient to appreciate the nature and implications of a
6 health care decision, to make an informed choice
7 regarding the alternatives presented, and to commun-
8 icate that choice in an unambiguous manner.

9 (b) Where there has been no adjudication of incompe-
10 tence of a patient or prospective patient, or appointment
11 of a guardian for such patient or prospective patient,
12 and where there is no applicable durable power of
13 attorney for such patient or prospective patient, but

14 where such patient or prospective patient is unable to
15 grant informed consent for nursing home or personal
16 care home health care services or to acknowledge
17 notification by a nursing home or personal care home
18 of his or her rights, responsibilities, and any applicable
19 rules and regulations of the nursing home or personal
20 care home due to physical or mental incapacity, as
21 documented in such patient's or prospective patient's
22 health care records by two physicians licensed to
23 practice medicine in this state under the provisions of
24 article three or article fourteen, both of chapter thirty
25 of this code, or one such physician and one licensed
26 psychologist, the following persons shall be deemed the
27 patient's or prospective patient's, representative autho-
28 rized to consent to nursing home or personal care home
29 health care services for such patient or prospective
30 patient to acknowledge notification by a nursing home
31 or personal care home of such patient's or prospective
32 patient's rights, responsibilities and any applicable rules
33 and regulations of the nursing home or personal care
34 home, in the order of class priority set forth below:

- 35 (1) The patient's or prospective patient's spouse;
- 36 (2) An adult child of the patient or prospective
37 patient;
- 38 (3) A parent of the patient or prospective patient;
- 39 (4) An adult sibling of the patient or prospective
40 patient;
- 41 (5) The nearest living relative of the patient or
42 prospective patient;
- 43 (6) Such other persons or classes of persons including,
44 but not limited to, such public agencies, public
45 guardians, other public officials, public and private
46 corporations, protective service agencies and other
47 representatives as the board of health may from time
48 to time designate in its rules and regulations promul-
49 gated pursuant to chapter twenty-nine-a of this code:
50 *Provided*, That there is no reason to believe that such
51 health care services are contrary to the patient's or
52 prospective patient's religious beliefs and there is no

53 actual notice of opposition by a member of the same or
54 a prior class.

55 (c) A nursing home or personal care home, as appli-
56 cable, shall document its good faith efforts to contact
57 permitted representatives in the order of class priority
58 and its efforts to contact all members of a class before
59 the next class is contacted but shall suffer no liability
60 or deficiency for any failure to apprise the proper
61 persons of the requirements of this section, so long as
62 it has acted reasonably and in good faith. A nursing
63 home or personal care home, as applicable, may rely on
64 the apparent authority of one member of a class to speak
65 for that class.

66 (d) The determination of incapacity hereunder shall
67 expire after six months or upon the patient's earlier
68 discharge from the nursing home or personal care home.
69 At the end of every such six-month period, if the patient
70 remains admitted to the nursing home or personal care
71 home the patient shall be reexamined by two physicians
72 licensed to practice medicine in this state as set forth
73 in subsection (b), or by one such physician and one
74 licensed psychologist, who shall render a determination
75 whether or not the patient remains physically or
76 mentally incapacitated, and such determination shall be
77 documented in the patient's health care records. The
78 authority of the representatives provided in subsection
79 (b) above shall terminate unless upon such reevaluation
80 the examining physicians, or the physician and the
81 psychologist, as the case may be, shall certify that the
82 patient remains physically or mentally incapacitated.

83 (e) In addition to the reevaluations required by
84 subsection (d) above, a nursing home or personal care
85 home, as applicable, upon request of any interested
86 person, or upon its own initiative if it shall have reason
87 to believe that the patient has regained his or her
88 capacity, shall permit or obtain a reevaluation at any
89 time by one or more physicians licensed to practice
90 medicine in this state as set forth in subsection (b), of
91 a prior determination of capacity or incapacity: *Pro-*
92 *vided*, That no patient shall be required to be reevalu-
93 ated within three months of a prior evaluation except

94 for good cause shown. A physician's determination of
95 capacity upon such reevaluation shall terminate any
96 authority of a patient's representative under this section.

97 (f) The board of health shall adopt rules and regula-
98 tions pursuant to the provisions of chapter twenty-nine-
99 a of this code setting forth a procedure by which any
100 interested person may obtain an administrative review
101 of any determination of capacity or incapacity made
102 pursuant to this section. Nothing contained in this
103 section shall preclude an interested person from seeking
104 a determination of competency or incompetency under
105 the provisions of article eleven, chapter twenty-seven of
106 this code in an appropriate case or from seeking any
107 form of judicial review.

108 (g) At least one of the physicians, or the psychologist,
109 who certifies the incapacity under subsections (b) and
110 (d) shall not be associated, in any way, with the personal
111 care home or the nursing home. The two persons
112 performing the certification shall not be associated in
113 the same medical practice.

CHAPTER 154

(Com. Sub. for S. B. 387—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four and five, article six, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article six by adding thereto a new section, designated section six, all relating to allowing a man to bring a paternity action; jurisdiction; default judgment; statute of limitations; scope of representation of the child advocate; and establishment of paternity upon acknowledgment.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four and five, article six,

chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article six be further amended by adding thereto a new section, designated section six, all to read as follows:

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-1. Action for establishment of paternity.

§48A-6-2. Statute of limitations; prior statute of limitations not a bar to action under this article; effect of prior adjudication between husband and wife.

§48A-6-3. Medical testing procedures to aid in the determination of paternity.

§48A-6-4. Establishment of paternity and duty of support.

§48A-6-5. Representation of parties.

§48A-6-6. Establishing paternity by acknowledgment of natural father.

§48A-6-1. Action for establishment of paternity.

1 (a) A civil action to establish the paternity of a child
2 and to obtain an order of support for the child may be
3 instituted, by verified complaint, in the circuit court of
4 the county where the plaintiff, the defendant or the child
5 resides. Such action may be brought by any of the
6 following persons:

7 (1) An unmarried woman with physical or legal
8 custody of a child to whom she gave birth;

9 (2) A married woman with physical or legal custody
10 of a child to whom she gave birth, if the complaint
11 alleges that:

12 (A) Such married woman lived separate and apart
13 from her husband for a period of one year or more
14 immediately preceding the birth of the child;

15 (B) Such married woman did not cohabit with her
16 husband at any time during such separation and that
17 such separation has continued without interruption; and

18 (C) The defendant, rather than her husband, is the
19 father of the child.

20 (3) Any person, including the state of West Virginia
21 or the department of human services, who is not the
22 mother of the child, but who has physical or legal
23 custody of such child;

- 24 (4) The guardian or committee of such child;
- 25 (5) The next friend of such child when the child is a
26 minor;
- 27 (6) By such child in his own right at any time after
28 the child's eighteenth birthday but prior to the child's
29 twenty-first birthday; or
- 30 (7) A man purporting to be the father of a child born
31 out-of-wedlock, when there has been no prior judicial
32 determination of paternity.
- 33 (b) A person who has sexual intercourse in this state
34 submits to the jurisdiction of the courts of this state for
35 an action brought under this article with respect to a
36 child who was conceived by that act of intercourse.
37 Service of process may be perfected according to the
38 rules of civil procedure.
- 39 (c) If the person against whom the action is brought
40 has failed to plead or otherwise defend the action after
41 proper service has been obtained, judgment by default
42 may be issued by the court as provided by the rules of
43 civil procedure.

**§48A-6-2. Statute of limitations; prior statute of
limitations not a bar to action under this
article; effect of prior adjudication between
husband and wife.**

- 1 (a) Except for an action brought by a child in his or
2 her own right under the provisions of subdivision (6),
3 subsection (a), section one of this article, an action for
4 the establishment of the paternity of a child shall be
5 brought prior to such child's eighteenth birthday.
- 6 (b) An action to establish paternity under the provi-
7 sions of this article may be brought by or on behalf of
8 a child notwithstanding the fact that, prior to the
9 effective date of this section, an action to establish
10 paternity may have been barred by a prior statute of
11 limitations set forth in this code or otherwise provided
12 for by law.
- 13 (c) An action to establish paternity under the provi-
14 sions of this article may be brought for any child who

15 was not yet eighteen years of age on the sixteenth day
16 of August, one thousand nine hundred eighty-four,
17 regardless of the current age.

18 (d) An action to establish paternity under the provi-
19 sions of this article may be brought for any child who
20 was not yet eighteen years of age on the sixteenth day
21 of August, one thousand nine hundred eighty-four, and
22 for whom a paternity action was brought but dismissed
23 because a statute of limitations of less than eighteen
24 years was then in effect.

25 (e) Any other provision of law to the contrary notwith-
26 standing, when a husband and wife or former husband
27 and wife, in an action for divorce or an action to obtain
28 a support order, have litigated the issue of the paternity
29 of a child conceived during their marriage to the end
30 that the husband has been adjudged not to be the father
31 of such child, such prior adjudication of the issue of
32 paternity between the husband and the wife shall not
33 preclude the mother of such child from bringing an
34 action against another person to establish paternity
35 under the provisions of this article.

**§48A-6-3. Medical testing procedures to aid in the
determination of paternity.**

1 (a) The court may, on its own motion, or shall upon
2 the motion of any party, order the mother, her child and
3 the man to submit to blood tests or tissue tests to aid
4 the court in proving or disproving paternity. If such
5 tests are ordered, the court shall direct that the
6 inherited characteristics, including, but not limited to,
7 blood types, be determined by appropriate testing
8 procedures at a hospital, independent medical institu-
9 tion or independent medical laboratory, duly licensed
10 under the laws of this state, or any other state, and shall
11 appoint an expert qualified as an examiner of genetic
12 markers to analyze and interpret the results and to
13 report to the court. The court shall consider the results
14 as follows:

15 (1) Blood or tissue test results which exclude the man
16 as the father of the child are admissible and shall be
17 clear and convincing evidence of nonpaternity and the

18 court shall, upon considering such evidence, dismiss the
19 action.

20 (2) Blood or tissue test results which show a statistical
21 probability of paternity of more than seventy-five
22 percent are admissible and shall be weighed along with
23 other evidence of the defendant's paternity.

24 (3) If the results of the blood or tissue tests or the
25 expert's analysis of inherited characteristics is disputed,
26 the court, upon reasonable request of a party, shall order
27 that additional tests be made by the same laboratory or
28 another laboratory at the expense of the party request-
29 ing additional testing.

30 (b) Documentation of the chain of custody of the blood
31 or tissue specimens is competent evidence to establish
32 such chain of custody. A verified expert's report shall
33 be admitted at trial unless a challenge to the testing
34 procedures or a challenge to the results of test analysis
35 has been made before trial. The costs and expenses of
36 making such tests shall be paid by the parties in
37 proportions and at times determined by the court.

§48A-6-4. Establishment of paternity and duty of support.

1 If the defendant, by verified responsive pleading shall
2 admit that the man is the father of the child and owes
3 a duty of support, or if after a trial on the merits, the
4 court or jury shall find, by clear and convincing
5 evidence that the man is the father of the child, the court
6 shall order support in accordance with the provisions of
7 this chapter.

§48A-6-5. Representation of parties.

1 (a) The children's advocate of the county where the
2 action under this section is brought shall litigate the
3 action in the best interests of the child although the
4 action is commenced in the name of a plaintiff listed in
5 section one of this article.

6 (b) The defendant shall be advised of his right to
7 counsel. In the event he files an affidavit that he is a

8 poor person within the meaning of section one, article
9 two, chapter fifty-nine of this code, counsel shall be
10 appointed to represent him. The service and expenses of
11 counsel shall be paid in accordance with the provisions
12 of article twenty-one, chapter twenty-nine of this code:
13 *Provided*, That the court shall make a finding of
14 eligibility for appointed counsel in accordance with the
15 requirements of said article and, if the person qualifies,
16 any blood or tissue tests ordered to be taken shall be
17 paid as part of the costs of the proceeding.

18 (c) The children's advocate shall litigate the action
19 only to the extent of establishing paternity and estab-
20 lishing and enforcing a child support order. The
21 children's advocate shall participate in matters of
22 custody and visitation only to the extent provided by
23 article three of this chapter.

§48A-6-6. Establishing paternity by acknowledgment of natural father.

1 (a) The natural father of a child may file an applica-
2 tion to establish paternity in circuit court when he
3 acknowledges that the child is his or when he has
4 married the mother of the child after the child's birth
5 and upon consent of the mother, or if she is deceased
6 or incompetent, or has surrendered custody, upon the
7 consent of the person or agency having custody of the
8 child or of a court having jurisdiction over the child's
9 custody. The application may be filed in the county
10 where the natural father resides, the child resides, or
11 the child was born. The circuit court, if satisfied that
12 the applicant is the natural father and that establish-
13 ment of the relationship is for the best interest of the
14 child, shall enter the finding of fact and an order upon
15 its docket, and thereafter the child is the child of the
16 applicant, as though born to him in lawful wedlock.

17 (b) A written acknowledgment by both the man and
18 woman that the man is the father of the named child
19 legally establishes the man as the father of the child for
20 all purposes and child support can be established under
21 the provisions of this chapter.

CHAPTER 155

(Com. Sub. for S. B. 46—By Senator Tucker, Mr. President, By Request)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article five-a of said chapter, all relating to permitting trustees of permanent endowment funds for cemetery associations to receive negotiable, reasonable compensation for their services; permitting nonresident trust companies and banks to serve as trustees for permanent endowment care funds; providing that secretary of state accepts service of process on behalf of such nonresident trustees; and bond.

Be it enacted by the Legislature of West Virginia:

That section five, article five, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five, article five-a of said chapter be amended and reenacted, all to read as follows:

Article

5. Cemeteries.

5A. Perpetual Care of and Trust Funds for Cemeteries.

ARTICLE 5. CEMETERIES.

§35-5-5. Permanent endowment funds for cemetery associations — Trustee therefor; appointment; bond; compensation; vacancy.

1 The board of directors of any such cemetery associ-
2 ation shall appoint a trustee, who shall be a responsible
3 businessman or some solvent federally insured banking
4 institution, to act as such trustee for a period of two
5 years, or until his, or its, successor is appointed. Such
6 trustee shall be known as the trustee of the permanent
7 endowment fund of such cemetery association, and shall
8 immediately upon his, or its, appointment and accep-
9 tance of the trust, give bond to the said cemetery
10 association, with some solvent and reliable bonding

11 company authorized to do business in this state, in a sum
12 equal to the amount which may come into the hands of
13 such trustee, which bond shall be increased or dimin-
14 ished from time to time so as always to equal at least
15 the amount of the trust funds in the hands of such
16 trustee; and the premium upon such bond shall be paid
17 out of the income of the trust funds in the trustee's hands
18 and as part of the cost of the administration of the trust
19 fund. No trustee appointed under this section shall enter
20 upon the discharge of his, or its, duties until such bond
21 is given and approved by the board of directors of such
22 cemetery association: *Provided*, That if the trustee so
23 appointed by any such cemetery association be a
24 federally insured banking institution authorized and
25 qualified to exercise trust powers under and subject to
26 the provisions of article four, chapter thirty-one-a of the
27 code of West Virginia, one thousand nine hundred
28 thirty-one, as amended, it shall not be required to give
29 the bond hereinbefore provided, excepting and unless
30 required by the provisions of section eighteen, article
31 four, chapter thirty-one-a of said code. The board of
32 directors of such cemetery association shall allow such
33 trustee, for service as such, a negotiable, reasonable fee
34 to be paid from such trust funds. In the event of a
35 vacancy in such trusteeship, or failure of the board of
36 directors of any such cemetery association to appoint
37 such trustee, after being requested so to do by any
38 stockholder of any such cemetery association, or its
39 successor, or any citizen interested, application may be
40 made to the circuit court of the county wherein such
41 cemetery association is located, and it shall be the duty
42 of the circuit court of such county to appoint a trustee,
43 who, when so appointed and qualified, shall have all the
44 powers and perform all the duties of such trustee as
45 provided in this section.

**ARTICLE 5A. PERPETUAL CARE OF AND TRUST FUNDS FOR
CEMETERIES.**

**§35-5A-5. Trustee of the permanent endowment care
funds.**

1 The trustee of the permanent endowment care fund
2 shall be a federally insured trust company or a federally

3 insured banking institution with fiduciary powers
4 authorized and qualified to exercise trust powers under
5 and subject to the provisions of article four, chapter
6 thirty-one-a of this code, or of the corresponding law of
7 another state. A nonresident federally insured trust
8 company or nonresident federally insured banking
9 institution so authorized and qualified may become a
10 trustee of a permanent endowment care fund notwithstanding the provision of section seven, article eight-a,
11 chapter thirty-one-a of this code. When a nonresident
12 trust company or nonresident banking institution
13 becomes a trustee of a permanent endowment care fund
14 for a perpetual care cemetery in this state, said
15 nonresident trust company or nonresident banking
16 institution thereby constitutes the secretary of state as
17 its true and lawful attorney-in-fact upon whom service
18 of notice and process in any action or proceeding against
19 it as trustee, and acceptance of such trust by said
20 nonresident trust company or nonresident banking
21 institution shall be a manifestation of agreement that
22 any notice or process, which is served in the manner
23 hereinafter provided in this section, shall be of the same
24 legal force and validity as though such nonresident trust
25 company or nonresident banking institution was personally served with notice and process within this state.
26 Service of such notice and process and the manner of
27 acceptance of the same by the secretary of state shall
28 be in accordance with the provisions of section fifteen,
29 article one, chapter thirty-one of this code.

32 Any nonresident trust company or nonresident banking institution appointed as trustee of a permanent
33 endowment care fund shall immediately upon acceptance of the trust give bond in accordance with the
34 provisions of section five, article five, chapter thirty-five
35 of this code.

38 The trustee shall invest such permanent endowment
39 care funds for the purpose of providing an income to be
40 used for the maintenance, improvement and preservation of the grounds, lots, buildings, equipment, records,
41 statuary, and other real and personal property of the
42

43 cemetery, and shall acquire, invest, reinvest, exchange,
44 retain, sell and manage all property now or hereafter
45 coming into such trustee's care or control.

46 The trustee shall exercise the judgment and care
47 under the circumstances then prevailing, which men of
48 prudence, discretion and intelligence, exercise in the
49 management of their own affairs, not in regard to
50 speculation, but in regard to the permanent disposition
51 of their funds, considering the probable income as well
52 as the probable safety of their capital.

53 Within the limitations of the foregoing standard, any
54 such trustee is authorized to acquire and retain without
55 any order of any court, every kind of property, real,
56 personal or mixed, and every kind of investment,
57 specifically including, but not by way of limitation,
58 bonds, debentures and other corporate obligations, and
59 stocks, preferred or common, which men of prudence,
60 discretion and intelligence acquire or retain for their
61 own account.

62 The trustee shall prepare an annual report of all of
63 the assets and investments of the permanent endowment
64 care fund. One copy shall be maintained at the office of
65 the cemetery and shall be available for inspection at
66 reasonable times by owners of interment rights in the
67 cemetery.

68 The trustee shall pay over to the cemetery all income
69 derived from the permanent endowment care fund
70 semiannually to be expended only for the maintenance,
71 improvement and preservation of the grounds, lots,
72 buildings, equipment, records, statuary and other real
73 and personal property of the cemetery.

CHAPTER 156

(H. B. 2740—By Delegates Flanigan and Kephart)

[Passed April 5, 1989; in effect from passage. Approved by the Governor.]

AN ACT to authorize and direct the commissioner of the

department of commerce to accept as an addition to the state park system and particularly as an addition to Pipestem State Resort Park, Pipestem, West Virginia, approximately twenty acres, more or less, known as Brush Creek Falls in Mercer County.

Be it enacted by the Legislature of West Virginia:

ADDITION TO PIPESTEM STATE RESORT PARK.

§1. Acceptance of Brush Creek Falls property.

1 The Legislature hereby directs the commissioner of
2 the Department of Commerce to accept the transfer by
3 deed from Princeton area business development corpo-
4 ration, of twenty acres, more or less, situate in Plymouth
5 District, Mercer County, West Virginia, known as the
6 "Brush Creek Falls Property," bounded and described
7 as follows:

8 "BEGINNING at a spruce pine on the bank of Brush
9 Creek; thence S. 38 degrees E. crossing the creek 12
10 poles (198.0 feet) to a large spruce pine on a hillside;
11 thence N. 32 degrees E. 60 Poles, (990. feet) to a Spruce
12 Pine on a cliff; thence S. 44 degrees W., crossing the
13 creek at 10 poles (165.0 feet) 59 poles (973.50 feet) to a
14 white pine on top of a hill; thence S. 32 degrees W. 90
15 poles (1485.0 feet) to a white pine and chestnut sapling;
16 thence N. 44 degrees E. 28 poles (462 feet) to a spruce,
17 pine, buckeye and cucumber sapling on bank of the
18 creek; thence with the meanderings of the creek to the
19 BEGINNING containing 30 acres, more or less. There
20 is excepted and reserve from the operation of this deed
21 a five acre tract which was conveyed by Lark Farley
22 and wife to L.A. Farley by deed dated June 1, 1922, of
23 record in said Clerk's Office in Deed Book 147 at page
24 154, which said exception is bounded and described as
25 follows:

26 "BEGINNING in the J.W. Johnston line near a
27 chestnut; thence running in a southeasterly direction
28 about 18 poles to a chestnut on a cliff; thence in a
29 southern direction about 20 poles to a chestnut on a cliff,
30 with the meanderings of the cliff; thence in a
31 southwesterly direction about 31 1/2 poles to a Bunch

32 of Chestnut Sprouts; thence about 2 poles to the Johnston
33 line, and then with the Johnston line about 37 poles to
34 the BEGINNING, and containing five (5) acres, more
35 or less."

CHAPTER 157

(Com. Sub. for H. B. 2695—By Mr. Speaker, Mr. Chambers,
and Delegate Murphy)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to repeal article twenty-four, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter seventeen of said code by adding thereto a new article, designated article sixteen-b; and to amend and reenact section seven, article three, chapter twenty-four of said code, all relating to public port authority; creation; board of directors—members, officers, qualifications, terms, oath, compensation, quorum and delegation of power; executive director; appointment; powers and duties; compensation; purposes of authority; commerce; tourism; divisions; powers and duties of authority; special West Virginia public port authority operations fund; foreign trading zones; export trading company; division of tourist trains and transportation; disclaimer of any liability of the state of West Virginia; prohibition on funds inuring to the benefit of or being distributable to directors, officers or private persons; prohibition against certain financial interests; criminal penalties; permit to abandon services; certificate; hearing upon intervention by consumer advocate; alternative service; and repeal tourist train and transportation board.

Be it enacted by the Legislature of West Virginia:

That article twenty-four, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that chapter seventeen of said code be amended by adding thereto a new article, designated article sixteen-b; and that section seven, article three, chapter twenty-four of said code be amended and reenacted, all to read as follows:

Chapter**17. Roads and highways.****24. Public Service Commission.****CHAPTER 17. ROADS AND HIGHWAYS.****ARTICLE 16B. PUBLIC PORT AUTHORITY.**

- §17-16B-1. Creation of authority.
- §17-16B-2. Board of directors—Members, officers, qualifications, terms, oath, compensation, quorum and delegation of power.
- §17-16B-3. Executive director; appointment; powers and duties; compensation.
- §17-16B-4. Purposes of authority; commerce; tourism.
- §17-16B-5. Divisions.
- §17-16B-6. Powers and duties of authority.
- §17-16B-7. Special West Virginia public port authority operations fund.
- §17-16B-8. Designation of local port authority districts, powers and duties; plan for development.
- §17-16B-9. Construction and operation of facilities by private enterprise; leasing of facilities by port authority.
- §17-16B-10. Foreign trade zones; free trade zones; ports of entry and customs zones.
- §17-16B-11. Study of feasibility of establishment of export trading company.
- §17-16B-12. Division of tourist trains and transportation; duties.
- §17-16B-13. Disclaimer of any liability of state of West Virginia.
- §17-16B-14. Prohibition on funds inuring to the benefit of or being distributable to directors, employees, officers or private persons; prohibition against certain financial interest; criminal penalties.

§17-16B-1. Creation of authority.

- 1 The West Virginia public port authority is hereby
- 2 created and shall be under the supervision of the
- 3 secretary of the department of transportation pursuant
- 4 to the provisions of chapter five-f of this code.

§17-16B-2. Board of directors—Members, officers, qualifications, terms, oath, compensation, quorum and delegation of power.

- 1 (a) The governing and administrative powers of the
- 2 authority shall be vested in a board of directors
- 3 consisting of nine members, six of whom shall be
- 4 appointed by the governor with the advice and consent
- 5 of the Senate.

6 All directors of the authority shall be residents of the
7 state of West Virginia. The directors shall annually elect
8 from the representatives of the private sector, as
9 provided in subsection (b), one of their members as
10 chairman. The directors shall annually elect one of their
11 members as vice chairman, one as secretary and one as
12 treasurer. The board may elect such other officers from
13 its membership or from its staff as it deems proper and
14 prescribe their powers and duties. Appointments to fill
15 a vacancy of one of the appointed members shall be
16 made in the same manner as the original appointment.

17 (b) Six members of the board shall be from the
18 private sector, with one member of the board from each
19 congressional district of the state as of the effective date
20 of this article, and shall represent the public interest
21 generally. At least one member may be appointed that
22 has recognized ability and practical experience in
23 transportation. At least one member may be appointed
24 that has recognized ability and practical experience in
25 banking and finance. At least one member may be
26 appointed that has recognized ability and practical
27 experience in international trade. At least one member
28 may be appointed that has recognized ability and
29 practical experience in business management or
30 economics.

31 (c) The governor shall appoint two members of the
32 board whose terms shall expire on the first day of July,
33 one thousand nine hundred ninety; two members of the
34 board whose term shall expire on the first day of July,
35 one thousand nine hundred ninety-one; two members of
36 the board whose term shall expire on the first day of
37 July, one thousand nine hundred ninety-two. Their
38 respective successors shall be appointed for terms of
39 three years from the first day of July of the year of
40 appointment. Each member shall serve until his
41 successor is appointed and qualified.

42 One ex officio member of the board shall be the
43 secretary of transportation or his designee.

44 One ex officio member of the board shall be the
45 director of the department of commerce or his designee.

46 One ex officio member of the board shall be the
47 director of the governor's office of community and
48 industrial development or his designee.

49 (d) Each director, before entering upon his duties,
50 shall take and subscribe to the oath or affirmation
51 required by the West Virginia constitution. A record of
52 each such oath or affirmation shall be filed in the office
53 of the secretary of state.

54 (e) Members of the board shall not be entitled to
55 compensation for their services but shall be reimbursed
56 for all necessary expenses actually incurred in connec-
57 tion with the performance of their duties as members.

58 (f) Five members of the board shall constitute a
59 quorum and the affirmative vote of the majority of
60 members present at a meeting of the board shall be
61 necessary and sufficient for any action taken by the
62 board, except that the affirmative vote of at least six
63 members is required for the approval of any resolution
64 authorizing the issuance of any bonds pursuant to this
65 article.

66 (g) No vacancy in the membership of the board
67 impairs the right of a quorum to exercise all rights and
68 perform all duties of the board. Any action taken by the
69 board may be authorized by resolution at any regular
70 or special meeting and shall take effect upon the date
71 the chairman certifies the action of the authority by
72 affixing his signature to the resolution unless some other
73 date is otherwise provided in the resolution.

74 (h) The board may delegate to one or more of its
75 members or to its officials, agents or employees such
76 powers and duties as it may deem proper.

**§17-16B-3. Executive director; appointment; powers and
duties; compensation.**

1 (a) The board of directors shall appoint an executive
2 director of the authority.

3 (b) The executive director shall be paid a salary to be
4 determined by the board of directors. The executive
5 director shall be responsible for managing and admin-

6 istering the daily functions of the authority and for
7 performing any and all other functions necessary or
8 helpful for the effective functioning of the authority,
9 together with all other functions and powers as may be
10 delegated to him by the board. The executive director
11 may, with the authorization of the board of directors,
12 employ support staff as deemed necessary to carry out
13 the duties and responsibilities of the authority.

14 (c) The chairman of the board shall serve as tempor-
15 ary director of the authority until appointment of the
16 executive director pursuant to this section.

§17-16B-4. Purposes of authority; commerce; tourism.

1 (a) *Commercial activity.*—The Legislature finds that
2 the state of West Virginia must look to new opportun-
3 ities to expand and diversify its economy and the
4 general welfare and well-being of its people. The
5 Legislature further finds that if West Virginia is to keep
6 and attract industry, it must provide for a modern and
7 efficient transportation infrastructure that will allow
8 and facilitate business to compete on a regional, national
9 and international basis. The Legislature finds that West
10 Virginia has the potential to establish an efficient and
11 low cost system of intermodal transportation by linking
12 together its abundant navigable waters and rivers, its
13 rail systems, its interstate and modern highway system,
14 and its airports into an intermodal transportation
15 network connected and served by various intermodal
16 ports, terminals and facilities located at strategic
17 regional sites throughout the state.

18 The Legislature further finds that it would be the
19 purpose of these intermodal ports and terminals, under
20 the direction of the West Virginia public port authority,
21 or local port authority districts, to negotiate, coordinate
22 and supervise the shipment of products and natural
23 resources from the producers in West Virginia to both
24 domestic and international markets, including passage
25 through other states and through the seaports of other
26 states to the seaports of foreign countries.

27 The Legislature further finds that it is the corollary
28 purpose of the public port authority to assist state

29 businesses to engage in export trade activities, both
30 domestic and international, in furtherance of its powers
31 and duties, including the formation of export trading
32 companies and foreign trade zones.

33 (b) *Tourism*.—The Legislature finds that the same
34 intermodal transportation network, as set forth in this
35 section for commercial purposes, may also serve to
36 enhance tourism in West Virginia by providing access
37 and linkage to the various tourist and historic attrac-
38 tions around the state through the utilization of
39 railroads, waterways, highways, airways and other
40 forms of transportation.

41 The Legislature further finds that it would be the
42 purpose of the public port authority to negotiate and
43 coordinate the movement of tourists and travelers
44 through the state by assisting the tourist and travel
45 industry, state agencies and other political subdivisions.

§17-16B-5. Divisions.

1 There shall be within the public port authority a
2 division of commerce, a division of tourist trains and
3 transportation, and such other divisions as are deemed
4 necessary by the board of directors.

§17-16B-6. Powers and duties of authority.

1 (a) The authority is granted the following powers and
2 duties:

3 (1) The authority shall initiate meetings with political
4 subdivisions of the state to assess specific transportation
5 needs and shall determine the needs of the state as a
6 whole in terms of transportation, as well as consider
7 feasibility studies for the purpose of determining the
8 best site locations for transportation centers, terminals,
9 ports and harbors, and foreign trade zones.

10 The authority shall give first consideration to selected
11 high priority opportunities as set forth in the document
12 entitled "Development of an Inland Port Authority," as
13 submitted to the governor's office of community and
14 industrial development on the second day of March, one
15 thousand nine hundred eighty-nine.

16 (2) On or before the fifteenth day of January, one
17 thousand nine hundred ninety, the authority shall
18 prepare and file a comprehensive report with the
19 governor and the Legislature setting forth the overall
20 strategic plan both short term and long term for
21 accomplishing the purposes set forth in this article.

22 (3) The public port authority shall coordinate with the
23 West Virginia turnpike commission or other parkways
24 authority, established pursuant to article sixteen-a,
25 chapter seventeen of this code, in the exercise of its
26 powers and duties hereunder and development of
27 appropriate intermodal transportation within the state.

28 (b) The authority has the following additional powers
29 and duties:

30 (1) The powers of a body corporate, including the
31 power to sue and be sued, to make contracts, and to
32 adopt and use a common seal and to alter the same as
33 may be deemed expedient;

34 (2) Acquire, purchase, install, lease, construct, own,
35 hold, operate, maintain, equip, use and control ports,
36 terminals, buildings, roadways, rights-of-way, rails and
37 such structures, equipment, facilities or improvements
38 necessary to carry out the provisions of this article, and
39 in connection therewith shall have the further right to
40 lease, install, construct, acquire, own, maintain, control
41 and use any and every kind or character of motive
42 powers and conveyances or appliances necessary or
43 proper to carry goods, wares and merchandise over,
44 along, upon or through the railway, highway, waterway
45 or airway or other conveyance of such transportation
46 system, excluding pipelines;

47 (3) To apply for and accept loans, grants or gifts of
48 money, property or service from any federal agency or
49 the state of West Virginia or any political subdivision
50 thereof or from any public or private sources available
51 for any and all of the purposes authorized in this article,
52 or imposed thereon by any such federal agency, the state
53 of West Virginia, or any political subdivision thereof, or
54 any public or private lender or donor, and to give such
55 evidences of indebtedness as may be required;

56 (4) To act as agent for the United States of America,
57 or any agency, department, corporation or instrumental-
58 ity thereof, in any manner coming within the purposes
59 or powers of the board;

60 (5) To initiate preservation of railroad, waterway,
61 highway and airway facilities, to promote economic
62 development and tourism of a specific nature in this
63 state;

64 (6) To meet and cooperate with similar authorities or
65 bodies of any of the several states contiguous with this
66 state, whose purpose in their respective states is to
67 establish an interstate or intermodal transportation
68 network;

69 (7) To enter into agreements, contracts or other
70 transactions with any federal, state, county, municipal
71 agency or private entity;

72 (8) To report annually to the Legislature by the first
73 day of January of each year on the status of projects,
74 operations, financial condition and other necessary
75 information relating to the statewide tourist intermodal
76 transportation system and public port authority
77 activities;

78 (9) To enter into agreements or contracts with the
79 West Virginia railroad maintenance authority for the
80 preservation, operation, and use of railroad lines;

81 (10) To assist and encourage the West Virginia
82 railroad maintenance authority to purchase railroad
83 tracks being abandoned by any common carrier, and to
84 financially assist the railroad maintenance authority in
85 making such purchase;

86 (11) To collect reasonable fees and charges in connec-
87 tion with making and servicing loans, notes, bonds,
88 obligations, commitments and other evidence of in-
89 debtedness, and in connection with providing technical,
90 consultive and project assistance services;

91 (12) To do any and all things necessary to carry out
92 and accomplish the purposes of this article.

93 (c) Incidental to the development of a comprehensive

94 strategic plan for intermodal transportation, the
95 executive director and staff of the authority shall
96 analyze the shipment of products through the ports of
97 the state for the purpose of expediting such shipments,
98 and shall be authorized to collect and analyze such
99 information, which is maintained in the ordinary course
100 of business by the person, firm or corporation providing
101 such information, pertaining to the transportation of
102 products which has been moved by rail, water, highway
103 or air to and from points within and without this state.

104 (1) Any such information and data supplied to the
105 executive director of the authority shall be for exclusive
106 use of the executive director and the staff of the
107 authority. Such information is deemed confidential and
108 is not subject to disclosure under the freedom of
109 information act. Neither the executive director nor any
110 staff member of the authority shall publicly disclose this
111 information and data to any member of the board of the
112 authority, nor to any person, firm, corporation or agent.
113 It shall be unlawful for any officer or employee of this
114 state to divulge or make known in any manner any
115 information obtained pursuant to this subsection or
116 disclose information concerning the personal or business
117 affairs of any individual or the business of any single
118 firm or corporation, or disclose any particulars set forth
119 or disclosed in any report or other information provided
120 to the authority.

121 (2) Any officer or employee (or former officer or
122 employee) of this state who violates this subsection shall
123 be guilty of a misdemeanor, and, upon conviction
124 thereof, shall be fined not more than one thousand
125 dollars or imprisoned for not more than one year, or
126 both, together with costs of prosecution.

127 (3) In carrying out the functions theretofore des-
128 cribed, the authority shall be deemed to be performing
129 an essential governmental function as an instrumental-
130 ity of the state of West Virginia.

**§17-16B-7. Special West Virginia public port authority
operations fund.**

1 There is hereby established a special West Virginia

2 public port authority operations fund which shall
3 operate as a special revolving fund. All proceeds and
4 revenues of the authority shall be credited to the fund
5 by the state treasurer on a monthly basis. At the end
6 of each fiscal year, any unexpended funds in this
7 account shall be reappropriated and available for
8 expenditure for the subsequent fiscal year: *Provided,*
9 That no funds shall be appropriated from the general
10 revenue fund of the state of West Virginia for the
11 operation of the authority.

**§17-16B-8. Designation of local port authority districts,
powers and duties; plan for development.**

1 (a) Upon application by a local governmental entity,
2 groups of local governmental entities, or joint venture
3 of local government entity or entities and private
4 industry, the board may grant authority for the creation
5 of a local inland port authority district. In so authorizing
6 such entities, political subdivisions of this state are
7 authorized to join with other political subdivisions of
8 this and sister states to form a local port authority. In
9 deciding on a local port district designation, consider-
10 ation shall be given to the following:

11 (1) Areas which have entered into a joint venture with
12 private industry;

13 (2) Areas for which the political subdivi-
14 sion(s) seeking designation has made or will make the
15 greatest effort, both financially and otherwise, to
16 encourage the establishment of facilities to enhance the
17 efficiency and cost of the movement of goods and
18 services to and from markets in West Virginia, or will
19 make the greatest effort to encourage the construction
20 and completion of infrastructure projects, including all
21 types of transportation systems.

22 (b) A local port authority district provided for in this
23 article has the authority to establish a local board of
24 directors, and has powers only as provided for by the
25 state board of directors. In no event shall the powers of
26 a local port authority district supersede the powers of
27 the state authority.

28 Any board of directors of a port authority district
29 shall prepare or cause to be prepared a plan for the
30 future development, construction and improvement of
31 its services and facilities.

**§17-16B-9. Construction and operation of facilities by
private enterprise; leasing of facilities by
port authority.**

1 (a) The authority or local port authority districts shall
2 foster and encourage the participation of private
3 enterprise in the development of the port facilities to the
4 fullest extent it deems practicable in the interest of
5 limiting the necessity of construction and operation of
6 such facilities by the port authority. In this respect, the
7 authority or local port authority districts may upon its
8 own motion or upon the written request of any other
9 party, advertise and solicit for the construction, opera-
10 tions and/or maintenance of any facility included in the
11 development plan in accordance to plans, specifications
12 and regulations therefor prepared by the board of
13 directors.

14 (b) It is further provided that in the event the board
15 of directors of the port authority or the local port
16 authority districts deem it advisable and practicable,
17 said board may cause certain facilities included in the
18 development plan to be installed by private enterprise
19 and leased back to the authority or local port authority
20 districts on an installment contract or option to pur-
21 chase: *Provided*, That any such lease bank arrangement
22 must be financially feasible and any bonds or loans
23 utilized to enter into such lease bank arrangement shall
24 be repayable in full from the expected rentals to be
25 generated by such facility.

**§17-16B-10. Foreign trade zones; free trade zones; ports
of entry and customs zones.**

1 The authority is empowered and directed to develop,
2 maintain and operate foreign trade zones, free trade
3 zones, ports of entry and customs zones under such
4 terms and conditions as are or may be prescribed by
5 federal law, and to keep foreign trade zone status for,
6 and to assist in the applications for foreign trade zone

- 7 status of political subdivisions and eligible private
8 corporations under federal law.

**§17-16B-11. Study of feasibility of establishment of
export trading company.**

1 (a) The authority may assist business in the formation
2 of joint venture to function as an export trading
3 company. The authority may conduct feasibility studies
4 to ascertain the feasibility of such a joint venture.

5 (b) The authority shall study whether the formation
6 of such an entity would aid and assist West Virginia
7 businesses in the export of goods. In the event that such
8 company is financially feasible, the authority is autho-
9 rized to create a quasi-public corporation, under the
10 authority's control, to perform such function. The
11 authority may advance seed money to such corporation
12 to get it established: *Provided*, That the obligations of
13 such quasi-public corporation shall not be considered
14 obligations of the authority.

15 (c) The authority is authorized to promulgate rules
16 and regulations to establish the duties, powers and
17 obligations of any export trading company to be
18 established under this section.

**§17-16B-12. Division of tourist trains and transportation;
duties.**

1 (a) The division of tourist trains and transportation
2 shall develop a plan to assess the feasibility, financial
3 and otherwise, of establishing a statewide intermodal
4 network of tourist transportation, so as to coordinate,
5 link and supervise the various means of transportation
6 including highway, rail, waterway and air and such
7 plan shall also include, if feasible, the development of
8 a comprehensive strategy and state plan for tourist
9 transportation.

10 (b) The division shall cooperate and assist the efforts
11 of public and private groups, agencies and political
12 subdivisions in establishing components of the tourist
13 transportation plan.

14 (c) The division shall specifically work to establish a

15 pilot project for the purpose of creating a tourist train
16 network in the area from Bluefield, West Virginia, to
17 Bramwell, West Virginia, to Matoaka, West Virginia,
18 and to Pocahontas, Virginia.

§17-16B-13. Disclaimer of any liability of state of West Virginia.

1 The state of West Virginia is not liable on notes or
2 other evidences of indebtedness of the public port
3 authority and such notes or other evidences of indebted-
4 ness are not a debt of the state of West Virginia, and
5 such notes or other evidences of indebtedness shall
6 contain on the face thereof a statement to such effect.

§17-16B-14. Prohibition on funds inuring to the benefit of or being distributable to directors, employees, officers or private persons; prohibition against certain financial interests; criminal penalties.

1 (a) No part of the funds of the public port authority
2 may inure to the benefit of or be distributable to its
3 directors, employees, officers or other private persons
4 except that the public port authority may pay reason-
5 able compensation to its officers and employees for
6 services rendered and to make loans and exercise its
7 other powers as previously specified in furtherance of
8 its corporate purposes: *Provided*, That no such loans
9 may be made, and no property may be purchased or
10 leased from, or sold, leased to or otherwise disposed of,
11 to any director or officer of the public port authority.

12 (b) No officer, member or employee of the authority
13 may be financially interested, directly or indirectly, in
14 any contract of any person with the authority, or in the
15 sale of any property, real or personal, to or from the
16 authority during such person's employment with the
17 authority or for a period of twelve months after
18 termination of such person's employment with the
19 authority. This section does not apply to contracts or
20 purchases of property, real or personal, between the
21 authority and any governmental agency. Any officer,
22 member or employee of the authority who has such
23 financial interest in a contract or sale of property

24 prohibited hereby is guilty of a misdemeanor, and, upon
25 conviction thereof, shall be fined not more than one
26 thousand dollars, or imprisoned in the county jail not
27 more than one year, or both fined and imprisoned.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-7. Permit to abandon service; certificate; hearing upon intervention by consumer advocate; alternative service.

1 (a) No railroad or other public utility shall abandon
2 all or any portion of its service to the public or the
3 operation of any of its lines which would affect the
4 service it is rendering the public unless and until there
5 shall first have been filed with the public service
6 commission of this state an application for a permit to
7 abandon service and obtained from the commission an
8 order stating that the present and future public
9 convenience and necessity permits such abandonment.

10 (b) The consumer advocate's office shall be notified of
11 all notices to abandon rail service. Within five (5) days
12 of the receipt of such notice the consumer advocate shall
13 notify the West Virginia public port authority of such
14 proposed abandonment. The public port authority shall
15 advise the consumer advocate as to whether such
16 abandonment is in the public interest or if such rail line
17 or service is an integral part of the intermodal trans-
18 portation system within West Virginia. If the public
19 port authority deems such abandonment to be not in the
20 public interest, then the consumer advocate shall
21 intervene to block such abandonment before all approp-
22 riate state and federal agencies or courts.

23 (c) The public service commissioner, to the extent
24 permitted by federal law, shall promulgate rules and
25 regulations to govern the abandonment of rail lines and
26 rail service, including, but not limited to, the providing
27 of a hearing for the presentation of evidence in cases
28 where the consumer advocate seeks intervention pursu-
29 ant to subsection (b).

30 (d) In the event the commission determines that an
31 application to abandon gas service or any part thereof
32 is in the public interest and required by the present and
33 future public convenience and necessity, it shall include
34 in its order, as a condition of releasing any such utility
35 from its public service obligation to provide gas service,
36 a provision requiring the utility, prior to discontinuing
37 service, to pay the cost reasonably necessary to convert
38 each customer to an alternate fuel source.

CHAPTER 158

(S. B. 297—By Senator Chafin)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to professional discipline of physicians and podiatrists; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; and probable cause determinations.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists;

investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determinations.

1 (a) The board may independently initiate disciplinary
2 proceedings as well as initiate disciplinary proceedings
3 based on information received from medical peer review
4 committees, physicians, podiatrists, hospital administra-
5 tors, professional societies and others.

6 The board may initiate investigations as to profes-
7 sional incompetence or other reasons for which a
8 licensed physician or podiatrist may be adjudged
9 unqualified if the board receives notice that, within the
10 most recent five-year period, five or more judgments or
11 settlements in excess of fifty thousand dollars each
12 arising from medical professional liability have been
13 rendered or made against such physician or podiatrist.

14 (b) Upon request of the board, any medical peer
15 review committee in this state shall report any informa-
16 tion that may relate to the practice or performance of
17 any physician or podiatrist known to that medical peer
18 review committee. Copies of such requests for informa-
19 tion from a medical peer review committee may be
20 provided to the subject physician or podiatrist if, in the
21 discretion of the board, the provision of such copies will
22 not jeopardize the board's investigation. In the event
23 that copies are so provided, the subject physician or
24 podiatrist is allowed fifteen days to comment on the
25 requested information and such comments must be
26 considered by the board.

27 After the completion of the hospital's formal discipli-
28 nary procedure and after any resulting legal action, the
29 chief executive officer of such hospital shall report in
30 writing to the board within sixty days the name of any
31 member of the medical staff or any other physician or
32 podiatrist practicing in the hospital whose hospital
33 privileges have been revoked, restricted, reduced or
34 terminated for any cause, including resignation, to-

35 together with all pertinent information relating to such
36 action. The chief executive officer shall also report any
37 other formal disciplinary action taken against any
38 physician or podiatrist by the hospital upon the recom-
39 mendation of its medical staff relating to professional
40 ethics, medical incompetence, medical malpractice,
41 moral turpitude or drug or alcohol abuse. Temporary
42 suspension for failure to maintain records on a timely
43 basis or failure to attend staff or section meetings need
44 not be reported.

45 Any professional society in this state comprised
46 primarily of physicians or podiatrists which takes
47 formal disciplinary action against a member relating to
48 professional ethics, professional incompetence, profes-
49 sional malpractice, moral turpitude or drug or alcohol
50 abuse, shall report in writing to the board within sixty
51 days of a final decision the name of such member,
52 together with all pertinent information relating to such
53 action.

54 Every person, partnership, corporation, association,
55 insurance company, professional society or other
56 organization providing professional liability insurance
57 to a physician or podiatrist in this state shall submit to
58 the board the following information within thirty days
59 from any judgment, dismissal or settlement of a civil
60 action or of any claim involving the insured: The date
61 of any judgment, dismissal or settlement; whether any
62 appeal has been taken on the judgment, and, if so, by
63 which party; the amount of any settlement or judgment
64 against the insured; and such other information as the
65 board may require.

66 Within thirty days after a person known to be a
67 physician or podiatrist licensed or otherwise lawfully
68 practicing medicine and surgery or podiatry in this
69 state or applying to be so licensed is convicted of a felony
70 under the laws of this state, or of any crime under the
71 laws of this state involving alcohol or drugs in any way,
72 including any controlled substance under state or
73 federal law, the clerk of the court of record in which
74 the conviction was entered shall forward to the board
75 a certified true and correct abstract of record of the

76 convicting court. The abstract shall include the name
77 and address of such physician or podiatrist or applicant,
78 the nature of the offense committed and the final
79 judgment and sentence of the court.

80 Upon a determination of the board that there is
81 probable cause to believe that any person, partnership,
82 corporation, association, insurance company, profes-
83 sional society or other organization has failed or refused
84 to make a report required by this subsection, the board
85 shall provide written notice to the alleged violator
86 stating the nature of the alleged violation and the time
87 and place at which the alleged violator shall appear to
88 show good cause why a civil penalty should not be
89 imposed. The hearing shall be conducted in accordance
90 with the provisions of article five, chapter twenty-nine-
91 a of this code. After reviewing the record of such
92 hearing, if the board determines that a violation of this
93 subsection has occurred, the board shall assess a civil
94 penalty of not less than one thousand dollars nor more
95 than ten thousand dollars against such violator. Anyone
96 so assessed shall be notified of the assessment in writing
97 and the notice shall specify the reasons for the assess-
98 ment. If the violator fails to pay the amount of the
99 assessment to the board within thirty days, the attorney
100 general may institute a civil action in the circuit court
101 of Kanawha County to recover the amount of the
102 assessment. In any such civil action, the court's review
103 of the board's action shall be conducted in accordance
104 with the provisions of section four, article five, chapter
105 twenty-nine-a of this code.

106 Any person may report to the board relevant facts
107 about the conduct of any physician or podiatrist in this
108 state which in the opinion of such person amounts to
109 professional malpractice or professional incompetence.

110 The board shall provide forms for filing reports
111 pursuant to this section. Reports submitted in other
112 forms shall be accepted by the board.

113 The filing of a report with the board pursuant to any
114 provision of this article, any investigation by the board
115 or any disposition of a case by the board does not

116 preclude any action by a hospital, other health care
117 facility or professional society comprised primarily of
118 physicians or podiatrists to suspend, restrict or revoke
119 the privileges or membership of such physician or
120 podiatrist.

121 (c) The board may deny an application for license or
122 other authorization to practice medicine and surgery or
123 podiatry in this state and may discipline a physician or
124 podiatrist licensed or otherwise lawfully practicing in
125 this state who, after a hearing, has been adjudged by
126 the board as unqualified due to any of the following
127 reasons:

128 (1) Attempting to obtain, obtaining, renewing or
129 attempting to renew a license to practice medicine and
130 surgery or podiatry by bribery, fraudulent misrepres-
131 entation or through known error of the board.

132 (2) Being found guilty of a crime in any jurisdiction,
133 which offense is a felony, involves moral turpitude or
134 directly relates to the practice of medicine. Any plea of
135 nolo contendere is a conviction for the purposes of this
136 subdivision.

137 (3) False or deceptive advertising.

138 (4) Aiding, assisting, procuring or advising any
139 unauthorized person to practice medicine and surgery
140 or podiatry contrary to law.

141 (5) Making or filing a report that the person knows
142 to be false; intentionally or negligently failing to file a
143 report or record required by state or federal law;
144 willfully impeding or obstructing the filing of a report
145 or record required by state or federal law; or inducing
146 another person to do any of the foregoing. Such reports
147 and records as are herein covered mean only those that
148 are signed in the capacity as a licensed physician or
149 podiatrist.

150 (6) Requesting, receiving or paying directly or
151 indirectly a payment, rebate, refund, commission, credit
152 or other form of profit or valuable consideration for the
153 referral of patients to any person or entity in connection
154 with providing medical or other health care services or

155 clinical laboratory services, supplies of any kind, drugs,
156 medication or any other medical goods, services or
157 devices used in connection with medical or other health
158 care services.

159 (7) Unprofessional conduct by any physician or
160 podiatrist in referring a patient to any clinical labora-
161 tory or pharmacy in which the physician or podiatrist
162 has a proprietary interest unless such physician or
163 podiatrist discloses in writing such interest to the
164 patient. Such written disclosure shall indicate that the
165 patient may choose any clinical laboratory for purposes
166 of having any laboratory work or assignment performed
167 or any pharmacy for purposes of purchasing any
168 prescribed drug or any other medical goods or devices
169 used in connection with medical or other health care
170 services.

171 As used herein, "proprietary interest" does not include
172 an ownership interest in a building in which space is
173 leased to a clinical laboratory or pharmacy at the
174 prevailing rate under a lease arrangement that is not
175 conditional upon the income or gross receipts of the
176 clinical laboratory or pharmacy.

177 (8) Exercising influence within a patient-physician
178 relationship for the purpose of engaging a patient in
179 sexual activity.

180 (9) Making a deceptive, untrue or fraudulent repres-
181 entation in the practice of medicine and surgery or
182 podiatry.

183 (10) Soliciting patients, either personally or by an
184 agent, through the use of fraud, intimidation or undue
185 influence.

186 (11) Failing to keep written records justifying the
187 course of treatment of a patient, such records to include,
188 but not be limited to, patient histories, examination and
189 test results and treatment rendered, if any.

190 (12) Exercising influence on a patient in such a way
191 as to exploit the patient for financial gain of the
192 physician or podiatrist or of a third party. Any such

193 influence includes, but is not limited to, the promotion
194 or sale of services, goods, appliances or drugs.

195 (13) Prescribing, dispensing, administering, mixing
196 or otherwise preparing a prescription drug, including
197 any controlled substance under state or federal law,
198 other than in good faith and in a therapeutic manner
199 in accordance with accepted medical standards and in
200 the course of the physician's or podiatrist's professional
201 practice.

202 (14) Performing any procedure or prescribing any
203 therapy that, by the accepted standards of medical
204 practice in the community, would constitute experimen-
205 tation on human subjects without first obtaining full,
206 informed and written consent.

207 (15) Practicing or offering to practice beyond the
208 scope permitted by law or accepting and performing
209 professional responsibilities that the person knows or
210 has reason to know he is not competent to perform.

211 (16) Delegating professional responsibilities to a
212 person when the physician or podiatrist delegating such
213 responsibilities knows or has reason to know that such
214 person is not qualified by training, experience or
215 licensure to perform them.

216 (17) Violating any provision of this article or a rule
217 or order of the board, or failing to comply with a
218 subpoena or subpoena duces tecum issued by the board.

219 (18) Conspiring with any other person to commit an
220 act or committing an act that would tend to coerce,
221 intimidate or preclude another physician or podiatrist
222 from lawfully advertising his services.

223 (19) Gross negligence in the use and control of
224 prescription forms.

225 (20) Professional incompetence.

226 (21) The inability to practice medicine and surgery or
227 podiatry with reasonable skill and safety due to physical
228 or mental disability, including deterioration through the
229 aging process or loss of motor skill or abuse of drugs
230 or alcohol. A physician or podiatrist adversely affected

231 under this subdivision shall be afforded an opportunity
232 at reasonable intervals to demonstrate that he can
233 resume the competent practice of medicine and surgery
234 or podiatry with reasonable skill and safety to patients.
235 In any proceeding under this subdivision, neither the
236 record of proceedings nor any orders entered by the
237 board shall be used against the physician or podiatrist
238 in any other proceeding.

239 (d) The board shall deny any application for a license
240 or other authorization to practice medicine and surgery
241 or podiatry in this state to any applicant who, and shall
242 revoke the license of any physician or podiatrist licensed
243 or otherwise lawfully practicing within this state who,
244 is found guilty by any court of competent jurisdiction
245 of any felony involving prescribing, selling, administer-
246 ing, dispensing, mixing or otherwise preparing any
247 prescription drug, including any controlled substance
248 under state or federal law, for other than generally
249 accepted therapeutic purposes. Presentation to the
250 board of a certified copy of the guilty verdict or plea
251 rendered in the court is sufficient proof thereof for the
252 purposes of this article. A plea of nolo contendere has
253 the same effect as a verdict or plea of guilt.

254 (e) The board may refer any cases coming to its
255 attention to an appropriate committee of an appropriate
256 professional organization for investigation and report.
257 Any such report shall contain recommendations for any
258 necessary disciplinary measures and shall be filed with
259 the board within ninety days of any such referral. The
260 recommendations shall be considered by the board and
261 the case may be further investigated by the board. The
262 board after full investigation shall take whatever action
263 it deems appropriate, as provided herein.

264 (f) The investigating body, as provided for in subsec-
265 tion (e) of this section, may request and the board under
266 any circumstances may require a physician or podiatrist
267 or person applying for licensure or other authorization
268 to practice medicine and surgery or podiatry in this
269 state to submit to a physical or mental examination by
270 a physician or physicians approved by the board. A
271 physician or podiatrist submitting to any such exami-

272 nation has the right, at his expense, to designate another
273 physician to be present at the examination and make an
274 independent report to the investigating body or the
275 board. The expense of the examination shall be paid by
276 the board. Any individual who applies for or accepts the
277 privilege of practicing medicine and surgery or podiatry
278 in this state is deemed to have given his consent to
279 submit to all such examinations when requested to do
280 so in writing by the board and to have waived all
281 objections to the admissibility of the testimony or
282 examination report of any examining physician on the
283 ground that the testimony or report is privileged
284 communication. If a person fails or refuses to submit to
285 any such examination under circumstances which the
286 board finds are not beyond his control, such failure or
287 refusal is prima facie evidence of his inability to
288 practice medicine and surgery or podiatry competently
289 and in compliance with the standards of acceptable and
290 prevailing medical practice.

291 (g) In addition to any other investigators it employs,
292 the board may appoint one or more licensed physicians
293 to act for it in investigating the conduct or competence
294 of a physician.

295 (h) In every disciplinary or licensure denial action,
296 the board shall furnish the physician or podiatrist or
297 applicant with written notice setting out with particu-
298 larity the reasons for its action. Disciplinary and
299 licensure denial hearings shall be conducted in accor-
300 dance with the provisions of article five, chapter twenty-
301 nine-a of this code. However, hearings shall be heard
302 upon sworn testimony and the rules of evidence for trial
303 courts of record in this state shall apply to all such
304 hearings. A transcript of all hearings under this section
305 shall be made, and the respondent may obtain a copy
306 of the transcript at his expense. The physician or
307 podiatrist has the right to defend against any such
308 charge by the introduction of evidence, the right to be
309 represented by counsel, the right to present and cross-
310 examine witnesses and the right to have subpoenas and
311 subpoenas duces tecum issued on his behalf for the
312 attendance of witnesses and the production of docu-

313 ments. The board shall make all its final actions public.
314 The order shall contain the terms of all action taken by
315 the board.

316 (i) Whenever it finds any person unqualified because
317 of any of the grounds set forth in subsection (c) of this
318 section, the board may enter an order imposing one or
319 more of the following:

320 (1) Deny his application for a license or other author-
321 ization to practice medicine and surgery or podiatry;

322 (2) Administer a public reprimand;

323 (3) Suspend, limit or restrict his license or other
324 authorization to practice medicine and surgery or
325 podiatry for not more than five years, including limiting
326 the practice of such person to, or by the exclusion of,
327 one or more areas of practice, including limitations on
328 practice privileges;

329 (4) Revoke his license or other authorization to
330 practice medicine and surgery or podiatry or to
331 prescribe or dispense controlled substances;

332 (5) Require him to submit to care, counseling or
333 treatment designated by the board as a condition for
334 initial or continued licensure or renewal of licensure or
335 other authorization to practice medicine and surgery or
336 podiatry;

337 (6) Require him to participate in a program of
338 education prescribed by the board;

339 (7) Require him to practice under the direction of a
340 physician or podiatrist designated by the board for a
341 specified period of time; and

342 (8) Assess a civil fine of not less than one thousand
343 dollars nor more than ten thousand dollars.

344 (j) Notwithstanding the provisions of section eight,
345 article one, chapter thirty of this code, if the board
346 determines the evidence in its possession indicates that
347 a physician's or podiatrist's continuation in practice or
348 unrestricted practice constitutes an immediate danger
349 to the public, the board may take any of the actions

350 provided for in subsection (i) of this section on a
351 temporary basis and without a hearing, if institution of
352 proceedings for a hearing before the board are initiated
353 simultaneously with the temporary action and begin
354 within fifteen days of such action. The board shall
355 render its decision within five days of the conclusion of
356 a hearing under this subsection.

357 (k) Any person against whom disciplinary action is
358 taken pursuant to the provisions of this article has the
359 right to judicial review as provided in articles five and
360 six, chapter twenty-nine-a of this code. Except with
361 regard to an order of temporary suspension of a license
362 for six months or less, a person shall not practice
363 medicine and surgery or podiatry or deliver health care
364 services in violation of any disciplinary order revoking
365 or limiting his license while any such review is pending.
366 Within sixty days, the board shall report its final action
367 regarding restriction, limitation, suspension or revoca-
368 tion of the license of a physician or podiatrist, limitation
369 on practice privileges or other disciplinary action
370 against any physician or podiatrist to all appropriate
371 state agencies, appropriate licensed health facilities and
372 hospitals, insurance companies or associations writing
373 medical malpractice insurance in this state, the Amer-
374 ican Medical Association, the American Podiatry
375 Association, professional societies of physicians or
376 podiatrists in the state and any entity responsible for the
377 fiscal administration of medicare and medicaid.

378 (l) Any person against whom disciplinary action has
379 been taken under the provisions of this article shall at
380 reasonable intervals be afforded an opportunity to
381 demonstrate that he can resume the practice of medicine
382 and surgery or podiatry on a general or limited basis.
383 At the conclusion of a suspension, limitation or restric-
384 tion period, the physician or podiatrist has the right to
385 resume practice pursuant to the orders of the board:
386 *Provided*, That for a revocation pursuant to subsection
387 (d) of this section a reapplication shall not be accepted
388 for a period of at least five years.

389 (m) Any entity, organization or person, including the
390 board, any member of the board, its agents or employees

391 and any entity or organization or its members referred
392 to in this article, any insurer, its agents or employees,
393 a medical peer review committee and a hospital
394 governing board, its members or any committee ap-
395 pointed by it acting without malice and without gross
396 negligence in making any report or other information
397 available to the board or a medical peer review
398 committee pursuant to law and any person acting
399 without malice and without gross negligence who assists
400 in the organization, investigation or preparation of any
401 such report or information or assists the board or a
402 hospital governing body or any such committee in
403 carrying out any of its duties or functions provided by
404 law, is immune from civil or criminal liability, except
405 that the unlawful disclosure of confidential information
406 possessed by the board is a misdemeanor as provided for
407 in this article.

408 (n) A physician or podiatrist may request in writing
409 to the board a limitation on or the surrendering of his
410 license to practice medicine and surgery or podiatry or
411 other appropriate sanction as provided herein. The
412 board may grant such request and, if it considers it
413 appropriate, may waive the commencement or continua-
414 tion of other proceedings under this section. A physician
415 or podiatrist whose license is limited or surrendered or
416 against whom other action is taken under this subsection
417 has a right at reasonable intervals to petition for
418 removal of any restriction or limitation on or for
419 reinstatement of his license to practice medicine and
420 surgery or podiatry.

421 (o) In every case considered by the board under this
422 article regarding discipline or licensure, whether
423 initiated by the board or upon complaint or information
424 from any person or organization, the board shall make
425 a preliminary determination as to whether probable
426 cause exists to substantiate charges of disqualification
427 due to any reason set forth in subsection (c) of this
428 section. If such probable cause is found to exist, all
429 proceedings on such charges shall be open to the public
430 who shall be entitled to all reports, records, and
431 nondeliberative materials introduced at such hearing,

432 including the record of the final action taken: *Provided*,
433 That any medical records, which were introduced at
434 such hearing and which pertain to a person who has not
435 expressly waived his right to the confidentiality of such
436 records, shall not be open to the public nor is the public
437 entitled to such records.

CHAPTER 159

(H. B. 2232—By Delegates Hatfield and Humphreys)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and five, article four-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to eligibility requirements for general anesthesia permits by eliminating person who employs or works in conjunction with a physician or osteopath who is qualified under this article.

Be it enacted by the Legislature of West Virginia:

That sections four and five, article four-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 4A. ADMINISTRATION OF GENERAL ANESTHESIA
AND PARENTERAL CONSCIOUS SEDATION BY
DENTISTS.**

§30-4A-4. Eligibility requirements for general anesthesia permit.

§30-4A-5. Eligibility requirements for permit to administer parenteral conscious sedation only.

§30-4A-4. Eligibility requirements for general anesthesia permit.

1 To receive a permit for the use of general anesthesia
2 and parenteral conscious sedation, a dentist shall:

3 (a) Be a dentist licensed by the West Virginia board
4 of dental examiners, hereinafter sometimes referred to
5 as the "board," or as "board of dental examiners" and
6 registered to practice dentistry in the state of West
7 Virginia;

8 (b) Apply to the West Virginia board of dental
9 examiners on an application form prescribed by the
10 board;

11 (c) Include with the application an application fee in
12 the amount of three hundred dollars;

13 (d) Have a properly equipped facility for the admin-
14 istration of general anesthesia, staffed with a supervised
15 team of auxiliary personnel capable of reasonably
16 handling procedures, problems, and emergencies inci-
17 dent thereto as outlined in the office anesthesia evalua-
18 tion manual as adopted and amended by the board of
19 dental examiners;

20 (e) In the case of any dentist who treats children who
21 applies for any permit under this section, such dentist
22 must document his or her competency to administer
23 general anesthesia and parenteral conscious sedation to
24 children by demonstrating to the satisfaction of the
25 board his or her familiarity with the "Guidelines for the
26 elective use of conscious sedation, deep sedation and
27 general anesthesia in pediatric patients" of American
28 Academy of Pediatrics and the American Academy of
29 Pediatric Dentistry; and

30 (f) Produce evidence showing at least one of the
31 following:

32 (1) He or she has completed a minimum of one year
33 of advanced training in an approved anesthesia
34 residency;

35 (2) He or she is a diplomate of the American board
36 of oral and maxillofacial surgery;

37 (3) He or she is eligible for an examination by the
38 American board of oral and maxillofacial surgery
39 (ABOMS);

40 (4) He or she is a fellow of the American association
41 of oral and maxillofacial surgery (AAOMS);

42 (5) He or she has successfully completed an American
43 dental association accredited oral and maxillofacial

44 surgery program as evidenced by a letter from the
45 program director stating that said applicant is qualified
46 to perform such anesthesia techniques;

47 (6) He or she is a fellow of the American dental
48 society of anesthesiology.

§30-4A-5. Eligibility requirements for permit to administer parenteral conscious sedation only.

1 To receive a permit for use of parenteral conscious
2 sedation only, the dentist shall:

3 (a) Be a dentist licensed by the West Virginia board
4 of dental examiners and registered to practice dentistry
5 in the state of West Virginia;

6 (b) Apply to the West Virginia board of dental
7 examiners on an application form prescribed by the
8 board for the use of parenteral conscious sedation only;

9 (c) Include with the application a fee in the amount
10 of three hundred dollars;

11 (d) Maintain a properly equipped facility for the
12 administration of parenteral conscious sedation, staffed
13 with a supervised team of auxiliary personnel capable
14 of reasonably handling procedures, problems, and
15 emergencies incident thereto as outlined in the office
16 anesthesia evaluation manual of the board of dental
17 examiners;

18 (e) In the case of any dentist who treats children who
19 applies for any permit under this section, such dentist
20 must document his or her competency to administer
21 parenteral conscious sedation to children by demonstrat-
22 ing to the satisfaction of the board his or her familiarity
23 with the "Guidelines for the elective use of conscious
24 sedation, deep sedation and general anesthesia in
25 pediatric patients" of the American Academy of
26 Pediatrics and the American Academy of Pediatric
27 Dentistry; and

28 (f) Produce evidence showing at least one of the
29 following:

30 (1) He or she meets at least one of the criteria

31 described in subdivisions (1) through (6) of subsection
32 (f) of section four of this article;

33 (2) He or she has satisfactorily completed at least one
34 year of post-doctoral dental training in a dental
35 residency or specialty program approved by the Amer-
36 ican dental association or the American medical
37 association which must include didactic studies and
38 practical experience in the administration of general
39 anesthesia and parenteral conscious sedation. A letter
40 from the chief of the approved residency program
41 verifying that said dentist has satisfactorily completed
42 said training and is competent to administer parenteral
43 conscious sedation may be deemed acceptable evidence
44 thereof; or

45 (3) He or she has satisfactorily completed a continuing
46 education course or program regarding the administra-
47 tion of parenteral conscious sedation which meets or
48 exceeds the American dental association council on
49 dental education's current "Guidelines For Teaching
50 The Comprehensive Control of Pain and Anxiety in
51 Dentistry."

CHAPTER 160

(S. B. 177—By Senators Wiedebusch and Warner)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to pharmacists; and requiring annual completion of accredited program of continuing professional education.

Be it enacted by the Legislature of West Virginia:

That article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-a, to read as follows:

ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUGSTORES.**§30-5-3a. Legislative finding; continuing professional education required.**

1 The Legislature finds and declares that because of the
2 continuous introduction of new therapeutic and diagnos-
3 tic agents and the changing concepts in the delivery of
4 health care services in the practice of pharmacy, it is
5 essential that a pharmacist undertake a continuing
6 education program in order to maintain his or her
7 professional competency and improve his or her profes-
8 sional skills. To assure the continued competency of the
9 pharmacist and to maintain uniform qualifications and
10 licensure in the profession of pharmacy for the protec-
11 tion of the health and welfare of its citizens, the West
12 Virginia Legislature deems it in the public interest to
13 adopt a continuing professional education program for
14 pharmacists.

15 Beginning the first day of July, one thousand nine
16 hundred ninety, no annual renewal license may be
17 issued to a pharmacist until such pharmacist has
18 submitted proof to the board of pharmacy that he or she
19 has satisfactorily completed an accredited program of
20 continuing professional education during the previous
21 year to help assure his or her continued competence to
22 engage in the practice of pharmacy. The board shall
23 from time to time determine the amount of continuing
24 education to be required.

25 The board shall promulgate rules pursuant to the
26 provisions of chapter twenty-nine-a of this code required
27 to carry out the stated objectives and purpose of this
28 section.

CHAPTER 161

(S. B. 137—By Senators J. Manchin, Tucker, Mr. President,
Blatnik, Holliday, Felton, Harman, Pritt and Warner)

[Passed February 27, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact section twelve-b, article five,

chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requirement that prescribing practitioner specify in his or her own handwriting "Brand Necessary" or "Brand Medically Necessary" or other designated language if generic drugs are not to be used to fill a prescription.

Be it enacted by the Legislature of West Virginia:

That section twelve-b, article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUGSTORES.

§30-5-12b. Definitions; selection of generic drug products.

1 (a) As used in this section:

2 (1) "Brand name" means the proprietary or trade
3 name selected by the manufacturer and placed upon a
4 drug or drug product, its container, label or wrapping
5 at the time of packaging.

6 (2) "Generic name" means the official title of a drug
7 or drug combination for which a new drug application,
8 or an abbreviated new drug application, has been
9 approved by the United States food and drug adminis-
10 tration and is in effect.

11 (3) "Substitute" means to dispense without the pres-
12 criber's express authorization a therapeutically equival-
13 ent generic drug product in the place of the drug
14 ordered or prescribed.

15 (4) "Equivalent" means drugs or drug products which
16 are the same amounts of identical active ingredients and
17 same dosage form, and which will provide essentially
18 the same therapeutic efficacy and toxicity when admin-
19 istered to an individual.

20 (5) "Practitioner" means a physician, an authorized
21 Type A physician assistant at the direction of his or her
22 supervising physician in accordance with the provisions
23 of section sixteen, article three of this chapter, osteo-

24 path, dentist, veterinarian, podiatrist, optometrist or
25 any other person duly licensed to practice and to
26 prescribe drugs under the laws of this state.

27 (b) A pharmacist who receives a prescription for a
28 brand name drug or drug product shall substitute a less
29 expensive equivalent generic name drug or drug
30 product unless in the exercise of his or her professional
31 judgment the pharmacist believes that the less expen-
32 sive drug is not suitable for the particular patient:
33 *Provided*, That no substitution may be made by the
34 pharmacist where the prescribing practitioner indicates
35 that, in his or her professional judgment, a specific
36 brand name drug is medically necessary for a particular
37 patient. Every drug prescription order shall contain an
38 instruction on whether or not an equivalent generic
39 name drug or drug product may be substituted.

40 A written prescription order shall permit the pharma-
41 cist to substitute an equivalent generic name drug or
42 drug product except where the prescribing practitioner
43 has indicated in his or her own handwriting the words
44 "Brand Necessary" or "Brand Medically Necessary."
45 The following sentence shall be printed on the prescrip-
46 tion form: "This prescription may be filled with a
47 generically equivalent drug product unless the words
48 "Brand Necessary" or the words "Brand Medically
49 Necessary" are written, in the practitioner's own
50 handwriting, on this prescription form."

51 A verbal prescription order shall permit the pharma-
52 cist to substitute an equivalent generic name drug or
53 drug product except where the prescribing practitioner
54 or his or her agent shall indicate to the pharmacist that
55 the prescription is "Brand Necessary" or "Brand
56 Medically Necessary." The pharmacist shall note the
57 instructions on the file copy of the prescription or chart
58 order form.

59 (c) No person may by trade rule, work rule, contract,
60 or in any other way prohibit, restrict, limit or attempt
61 to prohibit, restrict or limit the making of a generic
62 name substitution under subsection (b) of this section.
63 No employer or his or her agent may use coercion or

64 other means to interfere with the professional judgment
65 of the pharmacist in deciding which generic name drugs
66 or drug products shall be stocked or substituted:
67 *Provided*, That this section shall not be construed to
68 permit the pharmacist to generally refuse to substitute
69 less expensive therapeutically equivalent generic drugs
70 for brand name drugs, and that any pharmacist so
71 refusing shall be subject to the penalties prescribed in
72 section twenty-two, article five, chapter thirty of this
73 code.

74 (d) A pharmacist may substitute a drug under
75 subsection (b) of this section only where there will be
76 a savings to the buyer. Where substitution is proper
77 under subsection (b), or where the practitioner pres-
78 cribes the drug by generic name, the pharmacist shall,
79 consistent with his or her professional judgment,
80 dispense the lowest retail cost, effective brand which is
81 in stock.

82 (e) All savings in the retail price of the prescription
83 shall be passed on to the purchaser; these savings shall
84 be equal to the difference between the retail price of the
85 brand name product and the customary and usual price
86 of the generic product substituted therefor: *Provided*,
87 That in no event shall such savings be less than the
88 difference in acquisition cost of the brand name product
89 prescribed and the acquisition cost of the substituted
90 product.

91 (f) Each pharmacy shall maintain a record of any
92 substitution of an equivalent generic name drug product
93 for a prescribed brand name drug product on the file
94 copy of a written or verbal prescription or chart order.
95 Such record shall include the manufacturer and generic
96 name of the drug product selected.

97 All drugs shall be labeled in accordance with the
98 instructions of the practitioner.

99 Unless the practitioner directs otherwise, the pres-
100 cription label on all drugs dispensed by the pharmacist
101 shall indicate the generic name using abbreviations if
102 necessary and the name of the manufacturer. The same

103 notation will be made on the original prescription
104 retained by the pharmacist.

105 (g) A pharmacist may not dispense a product under
106 the provisions of this section unless the manufacturer
107 has shown that the drug has been manufactured with
108 the following minimum good manufacturing standards
109 and practices by:

110 (1) Labeling products with the name of the original
111 manufacturer and control number;

112 (2) Maintaining quality control standards equal to or
113 greater than those of the United States food and drug
114 administration;

115 (3) Marking products with identification code or
116 monogram; and

117 (4) Labeling products with an expiration date.

118 (h) The West Virginia board of pharmacy shall
119 establish by rule a formulary of generic type and brand
120 name drug products which are determined by the board
121 to demonstrate significant biological or therapeutic
122 inequivalence and which, if substituted, would pose a
123 threat to the health and safety of patients receiving
124 prescription medication. The formulary shall be promul-
125 gated by the board within ninety days of the date of
126 passage of this section, and may be amended in
127 accordance with the provisions of chapter twenty-nine-
128 a of this code.

129 (i) No pharmacist shall substitute a generic named
130 therapeutically equivalent drug product for a pres-
131 cribed brand name drug product if the brand name
132 drug product or the generic drug type is listed on the
133 formulary established by the West Virginia board of
134 pharmacy pursuant to this article, or is found to be in
135 violation of the requirements of the United States food
136 and drug administration.

137 (j) Any pharmacist who substitutes any drug shall,
138 either personally or through his or her agent, assistant
139 or employee, notify the person presenting the prescrip-
140 tion of such substitution. The person presenting the

141 prescription shall have the right to refuse the substitu-
142 tion. Upon request the pharmacist shall relate the retail
143 price difference between the brand name and the drug
144 substituted for it.

145 (k) Every pharmacy shall post in a prominent place
146 that is in clear and unobstructed public view, at or near
147 the place where prescriptions are dispensed, a sign
148 which shall read: "West Virginia law requires pharma-
149 cists to substitute a less expensive generic named
150 therapeutically equivalent drug for a brand name drug,
151 if available, unless you or your physician direct
152 otherwise." The sign shall be printed with lettering of
153 at least one and one-half inches in height with appropri-
154 ate margins and spacing as prescribed by the West
155 Virginia board of pharmacy.

156 (l) The West Virginia board of pharmacy shall
157 promulgate rules and regulations setting standards for
158 substituted drug products, obtaining compliance with
159 the provisions of this section and enforcing the provi-
160 sions of this section. Any person shall have the right to
161 file a complaint with the West Virginia board of
162 pharmacy regarding any violation of the provisions of
163 this article. Such complaints shall be investigated by the
164 board of pharmacy.

165 Fifteen days after the board has notified, by regis-
166 tered mail, a person, firm, corporation or copartnership
167 that such person, firm, corporation or copartnership is
168 suspected of being in violation of a provision of this
169 section, the board shall hold a hearing on the matter.
170 If, as a result of the hearing, the board determines that
171 a person, firm, corporation or copartnership is violating
172 any of the provisions of this section, it may, in addition
173 to any penalties prescribed by section twenty-two of this
174 article, suspend or revoke the permit of any person,
175 firm, corporation or copartnership to operate a phar-
176 macy or drugstore.

177 (m) No pharmacist complying with the provisions of
178 this section shall be liable in any way for the dispensing
179 of a generic named therapeutically equivalent drug,
180 substituted under the provisions of this section, unless

181 the generic named therapeutically equivalent drug was
182 incorrectly substituted.

183 In no event where the pharmacist substitutes a drug
184 under the provisions of this section shall the prescribing
185 physician be liable in any action for loss, damage, injury
186 or death of any person occasioned by or arising from the
187 use of the substitute drug unless the original drug was
188 incorrectly prescribed.

189 Failure of a practitioner to specify that a specific
190 brand name is necessary for a particular patient shall
191 not constitute evidence of negligence unless the practi-
192 tioner had reasonable cause to believe that the health of
193 the patient required the use of a certain product and no
194 other.

CHAPTER 162

(Com. Sub. for S. B. 254—By Senators Tucker, Mr. President, and Jackson)

[Passed March 24, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact article nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the practice and regulation of public accounting; setting forth findings and declarations; providing definitions; continuing and reorganizing the state board of accountancy; providing for the appointment, terms, qualifications, removal and compensation of members thereof; providing for the funding of said board; enabling and directing said board to promulgate rules; providing for the certification of qualified persons in the practice of public accounting and the continuing regulation of those previously certified or registered as public accountants under prior law; providing for the annual licensure of certified persons and registrants and enabling the board to promulgate the requirements therefor; prohibiting and providing for the criminal punishment of those engaged in the uncertified, unlicensed or unregistered practice of public accounting and other unlawful acts; providing

for the enjoinder of such acts and evidence thereof for purposes of such injunctive relief; exempting certain activity from regulation; providing for the ownership of working papers; providing for the practice of accountancy by accounting corporations; providing for board revocation and suspension of certificates, registrations and licenses; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 9. ACCOUNTANTS.

- §30-9-1. Findings and statement of purpose.
- §30-9-2. Definitions.
- §30-9-3. Board of accountancy; appointment, terms, qualifications, removal and compensation of members; funds; rules and regulations.
- §30-9-4. Certification; applicability of article to previous holders of certificates.
- §30-9-5. Grant and renewal of license; rights of licensee.
- §30-9-6. Practice of public accounting restricted to licensees; prohibited acts.
- §30-9-7. Prohibitions and penalties.
- §30-9-8. Injunction against unlawful act; evidence.
- §30-9-9. Inapplicability of article.
- §30-9-10. Ownership of working papers.
- §30-9-11. Accounting corporations.
- §30-9-12. Revocation or suspension of certificate, license or registration.
- §30-9-13. Effective date.

§30-9-1. Findings and statement of purpose.

- 1 The Legislature hereby finds and declares that the
 - 2 public interest requires the certification and licensure
 - 3 of those persons engaged in the practice of public
 - 4 accounting as herein defined in order to aid the citizens
 - 5 of this state in determining the qualifications of such
 - 6 persons; that this function is best served by a state board
 - 7 of accountancy subject to legislative control; and that
 - 8 this article is enacted to further the aforesaid public
- interest.

§30-9-2. Definitions.

- 1 As used in this article, the following words and terms
- 2 shall have the following meanings, unless the context
- 3 clearly indicates otherwise:

4 "Assurance" means any act or action, whether written
5 or oral, expressing an opinion or conclusion about the
6 reliability of a financial statement or about its confor-
7 mity with any financial accounting principles or
8 standards.

9 "Board" means the state board of accountancy, known
10 as the "West Virginia board of accountancy," continued
11 by the provisions of this article and established under
12 prior law.

13 "Certificate" means a certificate as a certified public
14 accountant issued by the board pursuant to this article
15 or corresponding provisions of prior law or a corres-
16 ponding certificate as a certified public accountant
17 issued after examination under the laws of any other
18 state.

19 "Financial statement" means a writing or other
20 presentation, including accompanying notes, which
21 presents, in whole or in part, historical or prospective
22 financial position, results of operations or changes in
23 financial position of any person, corporation, partner-
24 ship or other entity.

25 "License" means a license to practice public account-
26 ing issued annually under the provisions of this article
27 and "licensee" means a person holding such license.

28 "Practice of public accountancy" or "public account-
29 ing" means: (i) The giving of an assurance, in a report
30 or otherwise, whether expressly or implicitly; or (ii) in
31 the case of a person holding himself out as a certificate
32 holder, the performance of or offering to perform any
33 service involving the use of accounting or auditing skills,
34 including, but not limited to, management advisory or
35 consulting services, the preparation of tax returns, the
36 rendering of tax services, the keeping of books of
37 account and related accounting records and the prepa-
38 ration of financial statements without the expression of
39 an assurance: *Provided*, That an employee giving
40 assurances to or performing such services for an
41 employer shall not be deemed to be practicing public
42 accountancy.

43 "Registered" or "registrant" refers to or means a
44 person registered, but not certified, by the board under
45 prior law as a public accountant before the first day of
46 January, one thousand nine hundred sixty-seven, and
47 "registration" means such registration.

48 "Report" or "reports" when used with reference to
49 financial statements, means an opinion or disclaimer of
50 opinion or other form of language or representation
51 which states or implies any form of assurance or denial
52 of assurance.

53 "State" means any state of the United States, the
54 District of Columbia, Puerto Rico, the U. S. Virgin
55 Islands or Guam.

56 As used in this article, the singular and plural and
57 the masculine and feminine are interchangeable unless
58 the context clearly indicates otherwise.

**§30-9-3. Board of accountancy; appointment, terms,
qualifications, removal and compensation of
members; funds; rules and regulations.**

1 The state board of accountancy, known as the "West
2 Virginia board of accountancy," is hereby continued.
3 The board consists of five members appointed by the
4 governor with the advice and consent of the Senate for
5 terms of three years. Any vacancy on the board
6 occurring during a three-year term shall be filled by
7 appointment of the governor for the remainder of the
8 unexpired term. No member may serve more than two
9 consecutive full terms, and any member having served
10 two full terms may not be appointed or reappointed for
11 one year after completion of his second full term.

12 The members composing the board on and after the
13 effective date of this article shall be appointed by the
14 governor to serve as follows: Two for a term of three
15 years; two for a term of two years; and one for a term
16 of one year. Thereafter, as the terms of office of the
17 members respectively expire, the governor shall ap-
18 point, to fill the vacancies so occasioned, members whose
19 terms shall be for three years from the day on which
20 that of their immediate predecessors expired.

21 Every member of the board shall hold a certificate:
22 *Provided*, That the governor shall appoint as a member
23 no more than one noncertificated, licensed registrant
24 under prior law. At the time of any appointment at least
25 three members of the board shall hold a certificate and
26 a current license.

27 Notwithstanding the foregoing, for the first five years
28 after the effective date of this article the board shall
29 further consist of two additional members, and for the
30 second five years after the effective date of this article
31 the board shall further consist of one additional
32 member, each of whom shall be a noncertificated,
33 licensed registrant. One of such two additional members
34 shall be appointed for an initial term of one year, and
35 the second of such two additional members shall be
36 appointed for an initial term of two years. Thereafter,
37 and subject to the expiration of such five year periods,
38 as the terms of office of such additional members
39 respectively expire, the governor shall appoint, to fill the
40 vacancies so occasioned, members of like qualification
41 whose terms shall be for three years from the day on
42 which that of their immediate predecessors expired.

43 The governor shall remove from the board any
44 member who fails to attend, without just cause, three
45 regularly scheduled board meetings. Any member of the
46 board shall immediately and automatically forfeit his
47 membership if he (i) has his certificate, registration or
48 license suspended or revoked by the board; or (ii) is
49 convicted of a felony under the laws of any state or the
50 United States.

51 The board shall pay each member fifty dollars for
52 each day or portion thereof spent in the discharge of his
53 official duties and shall reimburse each member for his
54 actual and necessary expenses incurred in the discharge
55 of his official duties.

56 All fees and other moneys received by the board
57 pursuant to the provisions of this article shall be kept
58 by the board in a separate fund and expended solely for
59 the purposes of this article. The board shall retain its
60 funds from year to year, and no part of this special fund

61 shall revert to the general funds of this state. The
62 compensation provided by this article and all expenses
63 incurred under this article shall be paid from this
64 special fund. No compensation or expense incurred
65 under this article is a charge against the general funds
66 of this state.

67 The board shall make and enforce all necessary rules,
68 not inconsistent with this article, for the examination,
69 certification and licensure of public accountants as set
70 forth herein, and for the general practice of public
71 accounting, including the collection of fees for examina-
72 tion, certification and licensure. The board may promul-
73 gate and amend rules of professional conduct approp-
74 riate to establish and maintain a high standard of
75 integrity in the profession of public accountancy, which
76 rules are applicable to all licensees. No rule promul-
77 gated by the board is effective unless promulgated
78 pursuant to article three, chapter twenty-nine-a of this
79 code: *Provided*, That all rules promulgated by the board
80 under prior law shall remain in full force and effect
81 unless modified or repealed in accordance with this
82 section.

§30-9-4. Certification; applicability of article to previous holders of certificates.

1 The board shall grant a certificate to any applicant
2 who, at the time of making application:

3 (1) Is over the age of eighteen years;

4 (2) Is of good moral character;

5 (3) Is, at the time of taking the examination provided
6 for in subdivision (5), a resident of this state or employed
7 in this state on a full-time basis: *Provided*, That the
8 board may provide by rule for exceptions to this
9 requirement;

10 (4) Has satisfied the following educational
11 requirements:

12 (a) If application is made prior to the first day of July,
13 two thousand, the obtainment of a baccalaureate or
14 equivalent degree conferred by a college or university

15 acceptable to the board with a concentration in account-
16 ing or its equivalent, as determined by the board by
17 rule;

18 (b) If application is made on or after the first day of
19 July, two thousand, the satisfactory completion of one
20 hundred fifty semester hours or their equivalent at such
21 accredited institutions, including the obtainment of the
22 aforesaid degree.

23 (5) Has completed satisfactorily an examination to be
24 given by the board at least twice each year in accounting
25 theory, accounting practice, auditing, commercial law
26 or such other appropriate subjects as determined by the
27 board by rule. The board shall prescribe by rule for the
28 retention of credit for the satisfactory completion of a
29 portion of such examination in future examinations.

30 The board may, in its discretion, in lieu of the
31 examination provided for in this section, issue a
32 certificate to any person who possesses the other
33 qualifications stated in this section, and who is the
34 holder of a certificate issued under the laws of any state
35 which extends similar privileges to certified public
36 accountants of this state provided the requirements for
37 such certificates in the state which has granted the
38 certificate to such person, are, in the opinion of the
39 board, equivalent to those herein required; or who is the
40 holder of a certificate, or the equivalent thereof, granted
41 under the authority of a foreign nation, if the require-
42 ments for such certificates in the foreign nation, are, in
43 the opinion of the board, equivalent to those herein
44 required.

45 Persons who, on the effective date of this article, hold
46 certificates theretofore issued by the board are not
47 required to obtain additional certificates under this
48 article, but are otherwise subject to all provisions of this
49 article; and such certificates theretofore issued shall, for
50 all purposes, be considered certificates issued under this
51 article and subject to the provisions hereof.

§30-9-5. Grant and renewal of license; rights of licensee.

1 The board shall prescribe by rule for the issuance of

2 licenses on an annual basis. The board shall issue a
3 license only to a person who holds a valid certificate or
4 is registered under prior law. The board may establish
5 by rule work experience, continuing education, and
6 other qualifications for the licensure of certificate
7 holders: *Provided*, That no such qualifications may be
8 imposed on registrants under prior law.

9 Only a person who holds a valid license granted to him
10 by the board may practice public accounting. Failure to
11 obtain a license does not impair the right of a person
12 to obtain a license in future years, but only removes that
13 person from those licensed to practice during the year.

**§30-9-6. Practice of public accounting restricted to
licensees; prohibited acts.**

1 (a) A person who does not hold a valid license issued
2 by the board may not claim to hold one; nor may he or
3 she practice or offer to practice public accountancy or
4 public accounting; nor may he or she make any other
5 claim of licensure or approval related to the preparation
6 of financial statements or expression of assurances
7 thereon which is false or misleading.

8 (b) Except as set forth in this subsection, a person who
9 does not hold a valid certificate issued by the board may
10 not claim to hold one or describe himself as or assume
11 any of the following titles or designations: Certified
12 public accountant, CPA, public accountant, PA, certi-
13 fied accountant, CA, chartered accountant, licensed
14 accountant, LA, registered accountant, RA, independent
15 auditor, auditor, or similar designation: *Provided*, That
16 registrants under prior law may use the titles public
17 accountant or PA.

18 Partnerships practicing accountancy in this state may
19 use the aforesaid designations, or practice as such, only
20 if all the members thereof who practice in this state are
21 so licensed.

22 (c) A person who does not hold a valid license issued
23 by the board may not claim to have used "generally
24 accepted accounting principles," "generally accepted

25 accounting standards," "public accountancy standards,"
26 "public accountancy principles," "generally accepted
27 auditing principles," or "generally accepted auditing
28 standards," in connection with his preparation of any
29 financial statement; nor may he or she use any of these
30 terms in describing any complete or partial variation
31 from such standards or principles or to imply complete
32 or partial conformity with such standards or principles.

33 (d) A person who does not hold a valid license issued
34 by the board may not use the words "audit," "audit
35 report," "independent audit," "attest," "attestation,"
36 "examine," "examination," "opinion," or "review" in a
37 report on a financial statement.

38 (e) A person who does not hold a valid license issued
39 by the board may neither state nor imply that he or she
40 is tested, competent, qualified, or proficient in financial
41 standards established by: (i) The American institute of
42 certified public accountants or any agency thereof; (ii)
43 the governmental accounting standards board or any
44 agency thereof; (iii) the securities and exchange commis-
45 sion or any agency thereof; (iv) the financial accounting
46 standards board; or (v) any successor entity to an entity
47 named in this subsection.

48 (f) No person who holds a valid license issued by the
49 board may engage in the practice of public accounting
50 under a professional or firm name or designation that
51 contains a name or term other than past or present
52 partners, officers or shareholders of the firm or of a
53 predecessor firm; nor may any such person engage in
54 the practice of public accounting under a professional
55 or firm name which is deceptive or misleading.

§30-9-7. Prohibitions and penalties.

1 Any person who engages in any of the unauthorized
2 acts listed in section six of this article is guilty of a
3 misdemeanor, and, upon conviction thereof, shall be
4 fined not more than one thousand dollars or imprisoned
5 in the county jail not more than one year, or both fined
6 and imprisoned.

§30-9-8. Injunction against unlawful act; evidence.

1 The board or any other interested person may apply
2 to any court of competent jurisdiction for an order
3 enjoining any of the acts listed in section six of this
4 article. Upon a showing that any person has engaged,
5 or is about to engage, in any such acts, an injunction,
6 restraining order or such other order as may be
7 appropriate shall be granted by such court without
8 bond. The display or uttering by a person of any printed,
9 engraved or written instrument, bearing the name of
10 such person in conjunction with any of the claims, titles,
11 words or phrases listed in section six of this article shall,
12 for purposes of this section, be prima facie evidence that
13 such person has engaged in such acts.

§30-9-9. Inapplicability of article.

1 (a) Nothing contained in this article may be construed
2 to prevent any person from describing himself as an
3 “accountant” or a “bookkeeper” or from stating that he
4 practices accountancy or bookkeeping; nor, subject to
5 the licensure requirements herein imposed on persons
6 holding themselves out as certificate holders, may this
7 article be construed to prevent any person from
8 performing services involving the use of accounting
9 skills, rendering tax services, management advisory or
10 consulting services, or in the keeping of books of account
11 and related accounting records, or from preparing
12 financial statements without the expression of an
13 assurance.

14 (b) Nothing contained in this article may be construed
15 to prevent any person from stating that he has prepared,
16 compiled, assembled or drafted a financial statement,
17 provided he does not use any additional language which
18 comprises an assurance.

19 (c) The prohibitions of section six and the other
20 provisions of this article may not be construed to
21 preclude the use of the following or substantially similar
22 language: “I (We) have compiled the accompanying
23 (financial statements) of (name of entity) as of (time
24 period) for the (period) then ended. A compilation is
25 limited to presenting in the form of financial statements
26 information that is the representation of management

27 (owners). I (We) have not audited or reviewed the
28 accompanying financial statements and, accordingly, do
29 not express an opinion or any other form of assurance
30 on them. Management has elected to omit substantially
31 all (or certain) required disclosures (and the statement
32 of changes in financial position). If omitted disclosures
33 were included in the financial statements, they might
34 influence the user's conclusions about the (entity's)
35 financial position, results of operations and changes in
36 financial position. Accordingly, these financial state-
37 ments are not designed for those who are not informed
38 about these matters."

39 (d) Nothing contained in this article may be construed
40 to prohibit an employee from furnishing services to his
41 employer.

§30-9-10. Ownership of working papers.

1 (a) All statements, records, schedules, working papers
2 and memoranda prepared by a licensee, or a partner,
3 shareholder, officer, director or employee of a licensee,
4 incident to or in the course of rendering services to a
5 client pursuant to the practice of public accountancy of
6 a licensee, shall be and remain the property of the
7 licensee in the absence of an express agreement between
8 the licensee and the client to the contrary: *Provided,*
9 That this subsection shall not apply to reports submitted
10 to a client and statements, records, schedules, working
11 papers and memoranda provided by a client to a
12 licensee, or a partner, shareholder, officer, director or
13 employee to a licensee. No such statement, record,
14 schedule, working paper or memorandum may be sold,
15 transferred or bequeathed, without the consent of the
16 client or his personal representative, successor or
17 assignee, to anyone other than one or more surviving
18 partners or shareholders or new partners or share-
19 holders of the licensee or any combined or merged firm
20 or successor in interest to the licensee.

21 (b) In addition to any statements, records, schedules,
22 working papers, memoranda or reports required to be
23 furnished or returned to the client in accordance with
24 subsection (a), a licensee shall furnish to his client or

25 former client, upon request made within a reasonable
26 time after original issuance of the document in question:

27 (1) A copy of a tax return of the client.

28 (2) A copy of any report or other document issued by
29 the licensee to or for such client and not formally
30 withdrawn or disavowed by the licensee prior to the
31 request.

32 (3) A copy of the licensee's working papers to the
33 extent that such working papers include records that
34 would ordinarily constitute part of the client's records
35 and are not otherwise available to the client.

36 (4) Any accounting or other records belonging to, or
37 obtained from or on behalf of, the client which the
38 licensee removed from the client's premises or received
39 for the client's account. The licensee may make and
40 retain copies of such documents of the client whenever
41 those documents form the basis for work done by him.

§30-9-11. Accounting corporations.

1 One or more individuals, each of whom is licensed
2 within this state, may organize and become a share-
3 holder or shareholders of an accounting corporation.
4 Individuals who may be practicing public accountancy
5 as an organization created otherwise than pursuant to
6 the provisions of this section may incorporate under and
7 pursuant to this section. This section is not intended to
8 amend the statutory or common law as it relates to
9 associations or partnerships, except to allow partner-
10 ships of licensees to organize as an accounting
11 corporation.

12 An accounting corporation may render public ac-
13 counting services only through officers, employees and
14 agents who are themselves duly licensed within this
15 state. The term "employee" or "agent," as used in this
16 section, does not include secretaries, clerks, typists or
17 other individuals who are not usually and ordinarily
18 considered by custom and practice to be rendering
19 accounting services for which a license is required.

20 This section does not modify the law as it relates to

21 the relationship between a person furnishing accounting
22 services and his client, nor does it modify the law as it
23 relates to liability arising out of such a professional
24 service relationship. Except for permitting an account-
25 ing corporation, this section is not intended to modify
26 any legal requirement or court rule relating to ethical
27 standards of conduct required of persons providing
28 public accounting services.

29 An accounting corporation may issue its capital stock
30 only to persons who are duly certified or registered
31 under prior law.

32 When not inconsistent with this section, the organiza-
33 tion and procedures of accounting corporations shall
34 conform to the requirements of article one, chapter
35 thirty-one of this code.

36 The board may require that those persons subject to
37 this article must obtain prior board authorization before
38 beginning to act as an accounting corporation and may
39 require by regulation a fee for each application for
40 authorization to form an accounting corporation. The
41 board may adopt rules: (1) To set reasonable standards
42 for granting or refusing authorization to act as an
43 accounting corporation, (2) to require appropriate
44 information therefor from an accounting corporation
45 applicant, and (3) to notify the secretary of state that
46 certain persons have been given authorization by the
47 board to act as an accounting corporation.

48 Upon notification by the board of its approval the
49 secretary of state, upon compliance by the incorporators
50 with this section and the applicable provisions of
51 chapter thirty-one of this code, may issue to the
52 incorporators a certificate of incorporation for the
53 accounting corporation which then may engage in
54 practice through duly licensed or otherwise legally
55 authorized stockholders, employees and agents.

56 A shareholder of an accounting corporation may sell
57 or transfer his shares of stock in such corporation only
58 to (i) another individual who is duly licensed to practice
59 public accountancy in this state or (ii) back to the
60 corporation.

61 The corporate name of an accounting corporation shall
62 contain the last name or names of one or more of its
63 shareholders: *Provided*, That if the rules of the board so
64 permit, the corporate name may contain or include the
65 name or names of former shareholders or of persons who
66 were associated with a predecessor partnership or other
67 organization. The corporate name shall also contain the
68 words "accounting corporation," or the abbreviation
69 "A.C." The use of the word "company," "corporation" or
70 "incorporated," or any other words or abbreviations in
71 the name of an accounting corporation organized under
72 this article which indicate that such corporation is a
73 corporation, other than the words "accounting corpora-
74 tion" or the abbreviation "A.C.," is specifically prohi-
75 bited.

**§30-9-12. Revocation or suspension of certificate, license
or registration.**

1 After notice and hearing, as provided in article one
2 of this chapter, the board may revoke or suspend any
3 certificate or registration and may refuse to issue, or
4 refuse to renew, any license, for any one or combination
5 of the following causes:

6 (a) Fraud or deceit in obtaining a certificate, regis-
7 tration or license;

8 (b) Dishonesty, fraud or gross negligence in the
9 practice of public accounting;

10 (c) Violation of a rule of professional conduct promul-
11 gated by the board under the authority granted by this
12 article;

13 (d) Conviction of any felony, or any crime, an element
14 of which is deceit or fraud, under the laws of any state
15 or of the United States;

16 (e) Cancellation, revocation, suspension or refusal to
17 renew authority to practice public accountancy by any
18 other state, for any cause other than failure to pay an
19 annual license fee in such other state;

20 (f) Habitual drunkenness, addiction to the use of habit-
21 forming drugs, mental incompetence or gross immoral-
22 ity; or

- 23 (g) Unlawful practice of law as defined by the
24 supreme court of appeals or statutory law of this state.

§30-9-13. Effective date.

- 1 This article shall take effect on the first day of July,
2 one thousand nine hundred eighty-nine.

CHAPTER 163

(Com. Sub. for H. B. 2275—By Delegates M. Burke and Givens)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, five, six, seven, eight and twelve, article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the board of examiners of land surveyors and qualifications for the practice of land surveying; expanding the definition of the practice of land surveying to include surface mining surveying; increasing the experience requirement prior to licensure; allowing certain equivalent curricula; removing certain eligibilities for persons to obtain a license without examination; changing the license fee from seventy dollars to not to exceed two hundred dollars; providing lower fees for partial reexaminations; renewal fees; removing the exemption of certain persons from application of this article and including other persons; and providing for probation and fines as penalties to be imposed by the board as disciplinary actions.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five, six, seven, eight and twelve, article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13A. LAND SURVEYORS.

§30-13A-2. Definitions.

§30-13A-4. Powers and duties of board; funds.

- §30-13A-5. Qualifications of applicants for licenses; surveyor in training applications; fees; examinations.
- §30-13A-6. Issuance of license; notice of expiration; renewal; renewal fee; display.
- §30-13A-7. Exemption from regulation and licensing.
- §30-13A-8. Suspension or revocation of license.
- §30-13A-12. Duty of county clerks and public officials.

§30-13A-2. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (a) "Applicant" means any person making application
4 for an original or renewal license under the provisions
5 of this article;

6 (b) "Licensee" means any person holding a license
7 issued under the provisions of this article;

8 (c) "Board" means the West Virginia state board of
9 examiners of land surveyors created under the provi-
10 sions of this article;

11 (d) "Practice of land surveying" means the rendering
12 or offering to render for a fee, salary or other compen-
13 sation, monetary or otherwise, for the public generally,
14 any of the following services:

15 (1) The location, relocation, establishment, reestab-
16 lishment or retracement of any property line or
17 boundary of any parcel of land or of any road or utility
18 right-of-way, easement or alignment;

19 (2) The performance of any survey for the division,
20 subdivision or resubdivision of any tract of land;

21 (3) The determination of the position of any monu-
22 ment or reference point which marks a property line
23 boundary or corner, or setting, resetting or replacing
24 any such monument or reference point, by the use of the
25 principles of land surveying;

26 (4) The determination of the configuration or contour
27 of the earth's surface or the position of fixed objects
28 thereon or related thereto, by means of measuring lines
29 and angles, and applying the principles of mathematics;

30 (5) The performance of cadastral surveying, under-

31 ground surveying, surface mine surveying or hydrogra-
32 phic surveying;

33 (6) The preparation of subdivision maps; and

34 (7) The preparation of maps or drawings showing any
35 of the above.

36 (e) "Professional surveyor" means any person who
37 engages in the practice of land surveying.

38 (f) "Equivalent curriculum" includes, but is not
39 limited to, degrees in related curricula such as engineer-
40 ing, forestry, geology, mathematics, physics, computer
41 science or other related fields.

§30-13A-4. Powers and duties of board; funds.

1 (a) The board shall have the power and duty to:

2 (1) Examine applicants and determine their eligibil-
3 ity for a license to engage in the practice of land
4 surveying;

5 (2) Prepare, conduct and grade an apt and proper
6 written, oral or written and oral examination of
7 applicants for a license and determine the satisfactory
8 passing score thereon;

9 (3) Promulgate reasonable rules implementing the
10 provisions of this article and the powers and duties
11 conferred upon the board hereby, all of which reasona-
12 ble rules shall be promulgated in accordance with the
13 provisions of article three, chapter twenty-nine-a of this
14 code;

15 (4) Issue, renew, deny, suspend or revoke licenses to
16 engage in the practice of land surveying in accordance
17 with the provisions of this article;

18 (5) Investigate alleged violations of the provisions of
19 this article, reasonable rules promulgated hereunder
20 and orders and final decisions of the board and take
21 appropriate disciplinary action against any licensee for
22 the violation thereof or institute appropriate legal action
23 for the enforcement of the provisions of this article,
24 reasonable rules promulgated hereunder and orders and
25 final decisions of the board or take such disciplinary
26 action and institute such legal action;

27 (6) Keep accurate and complete records of its proceed-
28 ings, certify the same as may be appropriate, and
29 prepare, from time to time, a list showing the names and
30 addresses of all licensees;

31 (7) Take such other action as may be reasonably
32 necessary or appropriate to effectuate the provisions of
33 this article; and

34 (8) Establish standards to evaluate surveying or
35 equivalent curricula as it relates to the practice of land
36 surveying under the provisions of this article and to
37 determine the amount of experience required under
38 section five of this article which may be substituted for
39 a particular curriculum.

40 (b) All moneys paid to the board shall be accepted by
41 a person designated by the board and deposited by him
42 with the treasurer of the state and credited to an
43 account to be known as the "board of examiners of land
44 surveyors fund." All of the reasonable compensation of
45 the members of the board, the reimbursement of all
46 reasonable and necessary expenses actually incurred by
47 such members and all other costs and expenses incurred
48 by the board in the administration of this article shall
49 be paid from such fund, and no part of the state's
50 general revenue fund shall be expended for this purpose.

**§30-13A-5. Qualifications of applicants for licenses;
surveyor in training applications; fees;
examinations.**

1 (a) To be eligible for a license to engage in the
2 practice of land surveying, the applicant must:

3 (1) Be at least eighteen years of age;

4 (2) Be of good moral character;

5 (3) Have been a resident of the United States for one
6 year immediately preceding the date of application;

7 (4) Not have been convicted of a crime involving
8 moral turpitude;

9 (5) Have four years or more experience in the practice
10 of land surveying under the supervision of a person

11 authorized to practice land surveying in this state, or a
12 person authorized in another state or country to engage
13 in the practice of land surveying; and each year of
14 satisfactory study in a surveying or equivalent curric-
15 ulum shall be substituted for one year of experience, but
16 only two years of such experience requirement may be
17 fulfilled by such study. On and after the first day of
18 July, one thousand nine hundred ninety-one, six years
19 or more of such experience under the supervision of a
20 licensee or a person authorized in another state or
21 country to engage in the practice of land surveying shall
22 be required by those applicants who are graduates of a
23 surveying or equivalent curriculum of two scholastic
24 years or more. However, only three years of such
25 experience may be fulfilled by such study, and eight
26 years of such experience under the supervision of a
27 person authorized to practice land surveying in this
28 state, or a person authorized in another state or country
29 to engage in the practice of land surveying, shall be
30 required for those applicants who are not graduates of
31 a surveying or equivalent curriculum; and

32 (6) Have passed the examination prescribed by the
33 board, which examination shall cover the basic subject
34 matter of land surveying and land surveying skills and
35 techniques.

36 (b) Any applicant for any such license shall submit an
37 application therefor on forms provided by the board.
38 Such application shall be verified and shall contain a
39 statement of the applicant's education and experience,
40 the names of five persons for reference (at least three
41 of whom shall be licensees or persons authorized in
42 another state or country to engage in the practice of land
43 surveying, who have knowledge of his work) and such
44 other information as the board may from time to time
45 by reasonable rule prescribe.

46 (c) An applicant shall pay to the board with his
47 application an examination fee for the purpose of
48 covering the cost of the examination not to exceed two
49 hundred dollars as determined by the board by rule.

50 (d) Examinations shall be held at least once each year

51 at such time and place as the board shall determine. The
52 scope of the examination and methods of procedure shall
53 be determined by the board. An applicant who fails to
54 pass all or any part of an examination may reapply at
55 any time and shall furnish additional information as
56 requested by the board. The cost of reexamination will
57 be based on the cost of the examination as determined
58 by the board by rule.

**§30-13A-6. Issuance of license; notice of expiration;
renewal; renewal fee; display.**

1 Whenever the board finds that an applicant meets all
2 of the requirements of this article for a license to engage
3 in the practice of land surveying, it shall forthwith issue
4 to such person such license; and otherwise the board
5 shall deny the same. All licenses, whether original or
6 renewal, shall expire on the thirtieth day of June
7 following the date of issuance or renewal. The secretary-
8 treasurer of the board shall mail to every licensee, at
9 least thirty days prior to the expiration of such license,
10 notice of the expiration date and the amount of the
11 renewal fee. A license may be renewed without exam-
12 ination upon application for a renewal on a form
13 prescribed by the board and payment to the board of
14 an annual renewal fee of forty dollars. If a license is not
15 renewed when due, the fee shall increase one dollar per
16 month for each month or fraction thereof that such
17 renewal fee is not paid, up to a maximum of thirty-six
18 months. No license shall be renewed after expiration of
19 said period of thirty-six months, and the fact that a
20 license cannot be renewed because of the expiration of
21 said period of thirty-six months shall not prevent such
22 person from making application for a new license. The
23 board may deny any application for renewal for any
24 reason which would justify the denial of an original
25 application for a license. The board shall prescribe the
26 form of licenses and each such license shall be conspic-
27 uously displayed by the licensee at his or her principal
28 place of practice. A duplicate license may be issued upon
29 payment of a fee of ten dollars.

§30-13A-7. Exemption from regulation and licensing.

1 The following persons are exempt from regulation and
2 licensing under the provisions of this article and any
3 reasonable rules promulgated hereunder, and may
4 engage in the practice of land surveying without a
5 license issued under the provisions of this article and
6 any such reasonable rules:

7 (a) Any professional engineer authorized to practice
8 the profession of engineering as provided in article
9 thirteen of this chapter;

10 (b) Any employee of a proprietorship, partnership,
11 association, corporation or other business entity which
12 is engaged in the practice of land surveying in this state
13 or any employee of a proprietorship, partnership,
14 association, corporation or other business entity exemp-
15 ted from rules and licensing under subdivision (a) of this
16 section: *Provided*, That the work of any such employee
17 is done under the supervision of and certified by a
18 licensed employee of the proprietorship, partnership,
19 association, corporation or other business entity;

20 (c) Any employee of a person, firm, association or
21 corporation, when such employee is engaged in the
22 practice of land surveying exclusively for the person,
23 firm, association or corporation by which employed, or,
24 if a corporation, its parents, affiliates or subsidiaries,
25 and such person, firm, association or corporation does
26 not hold himself or itself out to the public as being
27 engaged in the business of land surveying;

28 (d) Any employee or officer of the United States, this
29 state or any political subdivision thereof, when such
30 employee is engaged in the practice of land surveying
31 exclusively for such governmental unit.

§30-13A-8. Suspension or revocation of license.

1 (a) The board may at any time upon its own motion
2 and shall upon the verified written complaint of any
3 person conduct an investigation to determine whether
4 there are any grounds for disciplinary action against the
5 holder of a license or the suspension or revocation of a
6 license issued under the provisions of this article.

7 (b) The board shall suspend or revoke the license of

8 any licensee, put the holder of any such license on
9 probation, or impose a fine not to exceed one thousand
10 dollars on the holder of any such license when it finds
11 the holder thereof has:

12 (1) Been convicted of a crime involving moral
13 turpitude;

14 (2) Obtained a license by means of fraud or deceit;

15 (3) Been incompetent, grossly negligent, or guilty of
16 fraud, deceit or other misconduct in the practice of land
17 surveying as defined by the board by reasonable rules;
18 or

19 (4) Failed or refused to comply with the provisions of
20 this article or any order or final decision of the board.

21 (c) Any suspension of a license shall continue for the
22 period specified in the order of suspension. Revocation
23 of a license shall not preclude application for a new
24 license, which application shall be processed in the same
25 manner and the application approved or denied and the
26 license issued or refused on the same grounds as any
27 other application for a license is processed, considered
28 and determined, except that any previous suspension
29 and the revocation may be considered in deciding
30 whether to approve or deny such application and issue
31 or refuse to issue such license.

§30-13A-12. Duty of county clerks and public officials.

1 No plat, report of survey or any survey related
2 document shall be filed by any clerk of a county
3 commission or accepted by any public official of this
4 state unless the seal required by section eleven of this
5 article has been affixed thereto, except that any
6 document prepared by a person exempted from the
7 regulation and licensing requirements of this article, as
8 provided in section seven of this article, shall not be
9 required to have the seal required by section eleven of
10 this article affixed thereto. Nothing in this section shall
11 prevent a document prepared prior to the twenty-fifth
12 day of May, one thousand nine hundred sixty-nine, from
13 being recorded without such seal. If a seal of such
14 exempt person is not affixed to said document, a

15 certificate shall be placed thereon by the exempt person,
16 stating upon what the exemption is claimed. Said
17 certificate may be in a form similar to the following:

18 "I certify that I am engaged in surveying exclusively
19 for _____ and believe

20 I am exempt from regulations and licensing under
21 West Virginia Code 30-13A-7

22
23

Signature"

CHAPTER 164

(Com. Sub. for S. B. 174—By Senator Tucker, Mr. President, By Request)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the fee for renewal of a chiropractic license and to requirements for continuing chiropractic education.

Be it enacted by the Legislature of West Virginia:

That section seven, article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 16. CHIROPRACTORS.

§30-16-7. License; annual renewal fee; effect of failure to renew; reinstatement.

1 All holders of certificates of license to practice chiro-
2 practic in this state shall renew them annually on or
3 before the first day of July of each year: (1) By pay-
4 ing the board an annual renewal fee not exceeding one
5 hundred dollars as determined by the board, and (2)
6 by presenting to the board evidence of attendance of at
7 least twelve classroom hours of continuing education
8 each year. The West Virginia board of chiropractic

9 examiners shall approve the fulfillment of the continu-
10 ing education requirement. The board shall notify each
11 certificate holder by mail, at least thirty days prior to
12 the first day of July of each year, of the necessity of
13 renewing his or her certificate. The first annual renewal
14 fee shall be due on the first day of July, one thousand
15 nine hundred sixty-five.

16 The failure to renew a certificate of license to practice
17 chiropractic shall operate as an automatic suspension of
18 the rights and privileges granted by its issuance.

19 A certificate of license suspended by a failure to make
20 an annual renewal may be reinstated by the board upon
21 presentation of evidence of attendance of at least twelve
22 classroom hours of continuing education for each year
23 such license has been suspended; payment of all fees that
24 would have been paid had the certificate holder
25 maintained his certificate in good standing and the
26 payment to the board of a reinstatement fee of not to
27 exceed fifty dollars as determined by the board; but no
28 certificate shall be reinstated after a lapse of three
29 years. After a lapse of three years, license may be issued
30 only after the former certificate holder subsequent to
31 said lapse has passed the examination provided for in
32 this article.

CHAPTER 165

(H. B. 2032—By Delegates Love and Leggett)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to West Virginia board of social work examiners; removing restriction on terms of board members; establishing roster of names and addresses of certain social workers; creating an administrative-clerical support staff position; and continuing the board.

Be it enacted by the Legislature of West Virginia:

That section three, article thirty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 30. SOCIAL WORKERS.

§30-30-3. Board of social work examiners.

1 (a) For the purpose of carrying out the provisions of
2 this article, there is hereby created a West Virginia
3 board of social work examiners, consisting of seven
4 members who shall be appointed by the governor,
5 subject to the following requirements:

6 (1) No person may be excluded from serving on the
7 board by reason of race, sex or national origin;

8 (2) Two members shall be certified social workers,
9 two members shall be graduate social workers and two
10 members shall be social workers. All such members
11 must be licensed under the provisions of this article in
12 accordance with their respective titles. In addition,
13 there shall be one member of the board chosen from the
14 general public: *Provided*, That those members who are
15 appointed by the governor to serve as the first board
16 after the effective date of this article shall be persons
17 eligible for the licensing required under this article:
18 *Provided, however*, That the member from the general
19 public shall never be required to be eligible for
20 licensing;

21 (3) The members of the first board to serve after the
22 effective date of this article shall be appointed within
23 ninety days thereof;

24 (4) The term of office for each member of the board
25 shall be three years: *Provided*, That one of the members
26 of the first board to serve after the effective date of this
27 article shall serve a term of two years, three of them
28 shall serve a term of three years and the remaining
29 three shall serve a term of four years; and

30 (5) The governor shall, whenever there is a vacancy
31 on the board due to circumstances other than the
32 expiration of the term of a member, appoint another
33 member with the same qualifications as the member

34 who has vacated to serve the duration of the unexpired
35 term.

36 For the purpose of accepting nominations for the
37 replacement of a member, the governor shall cause a
38 notice of the vacancy to be published at least thirty days
39 prior to an announcement of the replacement member,
40 as a Class I-0 legal advertisement, in accordance with
41 the provisions of section two, article three, chapter fifty-
42 nine of this code. The publication area shall be
43 statewide.

44 If the governor fails to make appointment in ninety
45 days after expiration of any term, the board shall make
46 the necessary appointment. Each member shall hold
47 office until the expiration of the term for which such
48 member is appointed and until a successor shall have
49 been duly appointed and qualified.

50 (b) Any members of the board may be removed from
51 office for cause, in accordance with procedures set forth
52 in this code for the removal of public officials from
53 office.

54 (c) Members of the board shall receive appropriate
55 compensation, not to exceed the amount specified for
56 attendance of similar board meetings as provided
57 elsewhere in this code, for attending meetings of the
58 board. In addition to such compensation, each member
59 of the board shall be reimbursed out of moneys approp-
60 riated for such purposes, reasonable expenses and all
61 sums which he or she necessarily shall expend in the
62 discharge of his or her duties as a member of the board,
63 not to exceed the prevailing rate paid to employees of
64 the state: *Provided*, That such compensation and such
65 expenses shall not exceed the amount received by the
66 board from licensing fees and penalties imposed under
67 subdivision (4), subsection (e) of this section.

68 (d) The board shall hold an annual election for the
69 purpose of electing a chairman, vice chairman and
70 secretary. The requirements for meetings and manage-
71 ment of the board shall be established in regulations
72 promulgated by the board as required by this article.

73 (e) In addition to the duties set forth in other
74 provisions of this article, the board shall:

75 (1) Recommend to the Legislature any proposed
76 modifications to this article;

77 (2) Report to county prosecutors any suspected
78 violations of this article: *Provided*, That no report shall
79 be made until the board has given the suspected violator
80 ninety days written notice of the suspected violation and
81 the violator has, within such ninety day period, been
82 afforded an opportunity to respond to the board with
83 respect to the allegation;

84 (3) Publish an annual report and a roster listing the
85 names and addresses of all persons who have been
86 licensed in accordance with the provisions of this article
87 as a certified social worker, graduate social worker or
88 social worker;

89 (4) Establish a fee schedule for the initial examina-
90 tion, license fee and the annual license renewal;

91 (5) Establish standards and requirements for contin-
92 uing education. In establishing these requirements the
93 board shall consult with professional groups and
94 organizations representing all levels of practice pro-
95 vided for in this article and the board shall consider
96 recognized staff development programs, continuing
97 education programs offered by colleges and universities
98 having social work programs approved or accredited by
99 the council on social work education, and continuing
100 education programs offered by recognized state and
101 national social work bodies: *Provided*, That such
102 standards and requirements for continuing education
103 shall not be construed to alter or affect in any way the
104 standards and requirements for licensing as set forth
105 elsewhere in this article;

106 (6) Conduct its proceedings in accordance with
107 provisions of article nine-a, chapter six of this code; and

108 (7) Employ, direct and define the duties of an
109 administrative clerical support staff person.

110 After having conducted a performance and fiscal

111 audit through its joint committee on government
112 operations, pursuant to section nine, article ten, chapter
113 four of this code, the Legislature hereby finds and
114 declares that the board of social work examiners be
115 continued and reestablished. Accordingly, notwithstanding
116 the provisions of section four, article ten, chapter
117 four of this code, the social work board of examiners
118 shall continue to exist until the first day of July, one
119 thousand nine hundred ninety-five.

CHAPTER 166

(Com. Sub. for H. B. 2131—By Delegates Phillips and Hatfield)

[Passed April 4, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to altering qualifications for the person appointed commissioner of banking.

Be it enacted by the Legislature of West Virginia:

That section two, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 2. DEPARTMENT OF BANKING.

§31A-2-2. Commissioner's appointment, term, qualifications, salary, oath and bond.

1 The commissioner of banking shall be appointed by
2 the governor, by and with the advice and consent of the
3 Senate. He shall serve at the will and pleasure of the
4 governor for the term for which the governor was
5 elected and until his successor is appointed and qualified,
6 unless earlier removed from office for cause as
7 provided by law.

8 Any person appointed as commissioner shall have a
9 college degree from an accredited institution, be of good

10 moral character, have knowledge of the theory and
11 practice of banking and be at least twenty-five years of
12 age.

13 Before entering upon the discharge of his duties as
14 commissioner, he shall take and subscribe to the oath
15 of office prescribed in section five, article four of the
16 constitution of West Virginia and shall enter into a bond
17 in the penal sum of one hundred thousand dollars, with
18 a corporate surety authorized to engage in business in
19 this state, conditioned upon the faithful discharge and
20 performance of the duties of his office. The premium of
21 such bond shall be payable from the state treasury out
22 of funds allocated to the department of banking. The
23 executed oath and bond shall be filed in the office of the
24 secretary of state.

CHAPTER 167

(H. B. 2157—By Delegates Given and Faircloth)

[Passed March 16, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a, relating to real estate licenses; requiring continuing education courses prior to license renewal.

Be it enacted by the Legislature of West Virginia:

That article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seven-a, to read as follows:

ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESMEN.

§47-12-7a. Continuing education; license renewal.

1 In addition to other provisions of this article, begin-
2 ning the first day of July, one thousand nine hundred

3 ninety, and every year thereafter, every real estate
4 broker and salesperson shall complete seven actual
5 hours of continuing education, with each hour equaling
6 fifty minutes of instructions. The commission shall
7 establish the continuing education program by rules and
8 shall approve all courses, seminars and lectures:
9 *Provided*, That continuing legal education courses
10 approved by the West Virginia State Bar shall be
11 approved by the commission. If approved in advance by
12 the real estate commission, correspondence courses and
13 audio or video tapes may be used to satisfy the contin-
14 uing education requirement.

15 Upon application for renewal of a real estate license
16 in each year following one thousand nine hundred
17 ninety, such real estate broker or salesperson must
18 furnish satisfactory evidence, as established by the
19 commission, that he or she has completed the required
20 number of continuing education hours: *Provided*, That
21 a real estate broker or salesperson holding a license on
22 the first day of July, one thousand nine hundred sixty-
23 nine, and continuously thereafter, shall be exempt from
24 continuing education requirements. When a real estate
25 broker or salesperson in an inactive status reverts to an
26 active status, he will obtain seven hours continuing
27 education each year without being required to complete
28 additional hours of education resulting from his inactive
29 status.

CHAPTER 168

(S. B. 103—By Senators Harman, Holliday and Felton)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the housing of adult male criminal offenders and adult female criminal offenders at Pruntytown Correctional Center.

Be it enacted by the Legislature of West Virginia:

That section seven, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-7. Pruntytown Correctional Center established as a minimum security facility; limitations on type of residents therein.

1 The commissioner of corrections is hereby authorized
2 to house adult male criminal offenders and adult female
3 criminal offenders as the commissioner deems necessary
4 for the operation of a just, humane and efficient system
5 of corrections at the facility located at Pruntytown, West
6 Virginia, heretofore known as the West Virginia
7 Industrial School for Boys. Henceforth, this facility shall
8 be known as the Pruntytown Correctional Center and
9 shall be operated according to rules and regulations
10 promulgated by the commissioner pursuant to the
11 provisions of section four, article thirteen, chapter sixty-
12 two.

CHAPTER 169

(Com. Sub. for S. B. 231—By Senator Tucker, Mr. President)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to a general revision of the law applicable to providing public legal services to indigents subjected to criminal or quasi-criminal proceedings.

Be it enacted by the Legislature of West Virginia:

That article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PUBLIC DEFENDER SERVICES.

- §29-21-1. Legislative findings; purpose.
- §29-21-2. Definitions.
- §29-21-3. Establishment of public defender services.
- §29-21-4. Purpose and duties of public defender services.
- §29-21-5. Executive director.
- §29-21-6. Powers, duties and limitations.
- §29-21-7. Criminal law research center established; functions.
- §29-21-8. Public defender corporations.
- §29-21-9. Panel attorneys.
- §29-21-10. Public defender corporation—Intent to apply for funding.
- §29-21-11. Public defender corporations—Funding applications; legal representation plans; review.
- §29-21-12. Public defender corporation funding applications.
- §29-21-13. Approval of public defender corporation funding applications; funding; compensation of corporations and panel attorneys; record keeping by public defender corporations.
- §29-21-14. Limitation on use of funds; exceptions.
- §29-21-15. Public defender corporations—Board of directors.
- §29-21-16. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.
- §29-21-17. Private practice of law by public defenders.
- §29-21-18. Records and reports.
- §29-21-19. Audits.
- §29-21-20. Appointed counsel immune from liability.

§29-21-1. Legislative findings; purpose.

1 The Legislature finds and declares that in certain
2 proceedings the state is required to provide high quality
3 legal assistance to indigent persons who would be
4 otherwise unable to afford adequate legal counsel; that
5 providing legal representation to those who face an
6 economic barrier to adequate legal counsel will serve the
7 ends of justice in accordance with rights and privileges
8 guaranteed to all citizens by the constitution of the
9 United States of America and the constitution of the
10 state of West Virginia; that the availability of quality
11 legal assistance reaffirms the faith of our citizens in our
12 government of laws; that the present system which
13 utilizes appointed counsel is not operating satisfactorily
14 in some areas of this state and the Legislature is
15 presently unable to determine what system or systems
16 will provide the most efficient means for providing legal
17 representation; that there is a need to explore alterna-
18 tive methods of delivering legal assistance, including the
19 use of salaried public defenders complemented by

20 private panel attorneys; that innovative programs and
21 pilot projects as well as a continuation of the present
22 appointed counsel system are necessary in separate
23 areas of the state to provide information and experience
24 upon which to base future legislative action.

§29-21-2. Definitions.

1 As used in this article, the following words and
2 phrases are hereby defined:

3 (1) "Eligible client": Any person who meets the
4 requirements established by this article to receive
5 publicly funded legal representation in an eligible
6 proceeding as defined herein;

7 (2) "Eligible proceeding": Criminal charges which
8 may result in incarceration, juvenile proceedings,
9 proceedings to revoke parole or probation if the
10 revocation may result in incarceration, contempts of
11 court, child abuse and neglect proceedings which may
12 result in a termination of parental rights, mental
13 hygiene commitment proceedings, paternity proceed-
14 ings, extradition proceedings, proceedings brought in
15 aid of an eligible proceeding, and appeals from or post
16 conviction challenges to the final judgment in an eligible
17 proceeding. Legal representation provided pursuant to
18 the provisions of this article shall be limited to the court
19 system of the state of West Virginia;

20 (3) "Legal representation": The provision of any legal
21 services or legal assistance consistent with the purposes
22 and provisions of this article;

23 (4) "Private practice of law": The provision of legal
24 representation by a public defender or assistant public
25 defender to a client who is not entitled to receive legal
26 representation under the provisions of this article, but
27 does not include, among other activities, teaching;

28 (5) "Public defender": The staff attorney employed on
29 a full-time basis by a public defender corporation who,
30 in addition to providing direct representation to eligible
31 clients, has administrative responsibility for the opera-
32 tion of the public defender corporation: *Provided*, That
33 the public defender may be a part-time employee if the

34 board of directors of the public defender corporation
35 finds efficient operation of the corporation does not
36 require a full-time attorney, and the executive director
37 approves such part-time employment;

38 (6) "Assistant public defender": A staff attorney
39 providing direct representation to eligible clients whose
40 salary and status as a full-time or part-time employee
41 are fixed by the board of directors of the public defender
42 corporation;

43 (7) "Public defender corporation": A corporation
44 created under section eight of this article for the sole
45 purpose of providing legal representation to eligible
46 clients; and

47 (8) "Public defender office": An office operated by a
48 public defender corporation to provide legal represen-
49 tation under the provisions of this article.

§29-21-3. Establishment of public defender services.

1 There is hereby created an executive agency known
2 as public defender services. The agency shall
3 administer, coordinate and evaluate programs by which
4 the state provides legal representation to indigent
5 persons, monitor the progress of various delivery
6 systems, and recommend improvements. The agency
7 shall maintain its office at the state capital.

§29-21-4. Purpose and duties of public defender services.

1 The agency shall have as its principal purpose the
2 development and improvement of programs by which
3 the state provides legal representation to indigent
4 persons.

§29-21-5. Executive director.

1 (a) The governor shall appoint, by and with the advice
2 and consent of the Senate, on or before the first day of
3 July, one thousand nine hundred eighty-nine, the
4 executive director of public defender services, who shall
5 serve at the will and pleasure of the governor. The
6 executive director shall be a qualified administrator as
7 determined by the governor, and shall be a member of
8 the bar of the supreme court of appeals. In addition to

9 the executive director there shall be such other em-
10 ployees as the executive director determines to be
11 necessary. The executive director shall have the author-
12 ity to promulgate rules, and shall have such other
13 authority and perform such duties as may be required
14 or necessary to effectuate this article. The executive
15 director shall provide supervision and direction to the
16 other agency employees in the performance of their
17 duties.

18 (b) The executive director's annual salary shall be as
19 determined by the governor.

§29-21-6. Powers, duties and limitations.

1 (a) Consistent with the provisions of this article, the
2 agency is authorized to make loans and grants to and
3 contracts with public defender corporations and with
4 individuals, partnerships, firms, corporations and
5 nonprofit organizations, for the purpose of providing
6 legal representation under this article, and may make
7 such other loans, grants and contracts as are necessary
8 to carry out the purposes and provisions of this article.

9 (b) The agency is authorized to accept, and employ or
10 dispose of in furtherance of the purposes of this article,
11 any money or property, real, personal or mixed, tangible
12 or intangible, received by gift, devise, bequest or
13 otherwise.

14 (c) The agency shall establish and the executive
15 director or his designate shall operate a criminal law
16 research center as provided for in section seven of this
17 article. This center shall undertake directly, or by grant
18 or contract, to serve as a clearinghouse for information;
19 to provide training and technical assistance relating to
20 the delivery of legal representation; and to engage in
21 research, except that broad general legal or policy
22 research unrelated to direct representation of eligible
23 clients may not be undertaken.

24 (d) The agency shall establish and the executive
25 director or his designate shall operate an accounting and
26 auditing division to require and monitor the compliance
27 with this article by public defender corporations and

28 other persons or entities receiving funding or compen-
29 sation from the agency. This division shall review all
30 plans and proposals for loans, grants and contracts, and
31 shall make a recommendation of approval or disappro-
32 val to the executive director. The division shall prepare,
33 or cause to be prepared, reports concerning the evalua-
34 tion, inspection, or monitoring of public defender
35 corporations and other grantees, contractors, persons or
36 entities receiving financial assistance under this article,
37 and shall further carry out the agency's responsibilities
38 for records and reports as set forth in section eighteen
39 of this article.

40 Upon the request of the executive director, the
41 accounting and auditing division shall require each
42 public defender corporation to annually report on
43 nonbillable time of its professional employees, including
44 time utilized in administration of the respective offices,
45 so as to compare such time to similar time expended in
46 nonpublic law offices for like activities.

47 (e) The accounting and auditing division shall provide
48 to the executive director assistance in the fiscal
49 administration of all of the agency's divisions. Such
50 assistance shall include, but not be limited to, budget
51 preparation and statistical analysis.

52 (f) The agency shall establish and the executive
53 director or a person designated by the executive director
54 shall operate an appellate advocacy division for the
55 purpose of prosecuting litigation on behalf of eligible
56 clients in the supreme court of appeals. The executive
57 director or a person designated by the executive director
58 shall be the director of the appellate advocacy division.
59 The appellate advocacy division shall represent eligible
60 clients upon appointment by the circuit courts, or by the
61 supreme court of appeals. The division may, however,
62 refuse such appointments due to a conflict of interest or
63 if the executive director has determined the existing
64 caseload cannot be increased without jeopardizing the
65 appellate division's ability to provide effective represen-
66 tation. In order to effectively and efficiently utilize the
67 resources of the appellate division the executive director

68 may restrict the provision of appellate representation to
69 certain types of cases.

70 The executive director is empowered to select and
71 employ staff attorneys to perform the duties prescribed
72 by this subsection. Within the appropriations to the
73 agency, the appellate division shall have its own budget
74 as determined to be appropriate by the executive
75 director and shall maintain vouchers and records for
76 representation of eligible clients, for record purposes
77 only.

**§29-21-7. Criminal law research center established;
functions.**

1 (a) Within the agency, there shall be a division known
2 as the criminal law research center which may:

3 (1) Undertake research, studies and analyses and act
4 as a central repository, clearinghouse and disseminator
5 of research materials;

6 (2) Prepare and distribute a criminal law manual and
7 other materials and establish and implement standard
8 and specialized training programs for attorneys practicing
9 criminal law;

10 (3) Provide and coordinate continuing legal education
11 programs and services for attorneys practicing criminal
12 law; and

13 (4) Prepare, supplement and disseminate indices and
14 digests of decisions of the West Virginia supreme court
15 of appeals and other courts, statutes and other legal
16 authorities relating to criminal law.

17 (b) The services of the criminal law research center
18 shall be offered at reasonable rates or by subscription,
19 and such service shall be provided to prosecuting
20 attorneys and their professional staffs, panel attorneys,
21 and private attorneys engaged in the practice of
22 criminal law on the same basis as such services are
23 provided to public defender corporations, public defend-
24 ers and assistant public defenders.

§29-21-8. Public defender corporations.

1 (a) In each judicial circuit of the state, there is hereby

2 created a "public defender corporation" of the circuit:
3 *Provided*, That one such public defender corporation
4 shall serve both the twenty-third and thirty-first judicial
5 circuits. The purpose of such public defender corpora-
6 tions is to provide legal representation in the respective
7 circuits in accordance with the provisions of this article.

8 (b) The public defender corporations are hereby
9 activated in the first, second, third, seventh, eighth,
10 ninth, eleventh, twelfth, thirteenth, fourteenth, fifteenth,
11 twenty-third and thirty-first combined, twenty-fifth,
12 twenty-eighth and thirtieth judicial circuits. Public
13 defender corporations in other circuits may be activated
14 by the executive director if the judge of a single judge
15 circuit, the chief judge of a multi-judge circuit or a
16 majority of the active members of the bar in the circuit
17 determine there is a need to activate the corporation and
18 certify that fact in writing to the executive director.

19 (c) Public defender corporations may apply in writing
20 to the executive director for permission to merge to form
21 multi-circuit or regional public defender corporations.
22 Applications for mergers shall be subject to the review
23 procedures set forth in section eleven of this article.

§29-21-9. Panel attorneys.

1 (a) In each circuit of the state, the circuit court shall
2 establish and maintain regional and local panels of
3 private attorneys-at-law who shall be available to serve
4 as counsel for eligible clients.

5 (b) An attorney-at-law may become a panel attorney
6 and be enrolled on the regional or local panel, or both,
7 to serve as counsel for eligible clients, by informing the
8 court. A prospective panel attorney shall inform the
9 court in writing, on forms provided by the executive
10 director, of a desire to accept appointments generally,
11 or of the specific types of cases in which he or she will
12 accept appointments. The attorney shall also indicate
13 whether or not he or she will accept appointments in
14 adjoining circuits and, if so, in which circuits. An
15 agreement to accept cases generally or certain types of
16 cases particularly shall not prevent a panel attorney
17 from declining an appointment in a specific case.

18 (c) In all cases where an attorney-at-law is required
19 to be appointed for an eligible client, the appointment
20 shall be made by the circuit judge. In circuits where a
21 public defender office is in operation, the judge shall
22 appoint the public defender office unless such appoint-
23 ment is not appropriate due to a conflict of interest or
24 unless the public defender corporation board of direc-
25 tors has notified the court that the existing caseload
26 cannot be increased without jeopardizing the ability of
27 defenders to provide effective representation. If the
28 public defender office is not available for appointment,
29 the court shall appoint one or more panel attorneys from
30 the local panel. If there is no local panel attorney
31 available, the judge shall appoint one or more panel
32 attorneys from the regional panel. If there is no regional
33 panel attorney available, the judge may appoint a public
34 defender office from an adjoining circuit if such public
35 defender office agrees to the appointment. In circuits
36 where no public defender office is in operation, the
37 judge shall first refer to the local panel and then to the
38 regional panel in making appointments, and if an
39 appointment cannot be made from the panel attorneys,
40 the judge may appoint the public defender office of an
41 adjoining circuit if such public defender office agrees to
42 the appointment. In any circuit, when there is no public
43 defender, or assistant public defender, local panel
44 attorney or regional panel attorney available, the judge
45 may appoint one or more qualified private attorneys to
46 provide representation, and such private attorney or
47 attorneys shall be treated as panel attorneys for that
48 specific case. In any given case, the appointing judge
49 may alter the order in which attorneys are appointed if
50 the case requires particular knowledge or experience on
51 the part of the attorney to be appointed.

**§29-21-10. Public defender corporation — Intent to apply
for funding.**

1 (a) Any public defender corporation established by
2 section eight of this article applying to public defender
3 services for financial assistance to establish a program
4 to provide legal representation consistent with this
5 article and any public defender corporation proposing

6 a major substantive modification to an existing program
7 shall notify the executive director and the circuit judges
8 in the area in which the program will deliver legal
9 representation of the intent to apply for such assistance
10 or modification. Such notice shall be given at least thirty
11 days prior to the filing of an application or a proposal
12 for modification.

13 (b) Notifications shall include a summary description
14 of the proposed program. The summary description
15 shall contain the following information:

16 (1) The identity of the applicant;

17 (2) The geographical area to be served by the pro-
18 posed program;

19 (3) A brief description of the proposed program,
20 general size or scale, estimated cost, or other character-
21 istics which will enable the circuit court to determine
22 how the system for representation of indigents within
23 the circuit may be affected by the proposed program;
24 and

25 (4) The estimated date the public defender corpora-
26 tion expects to formally file an application or modifica-
27 tion proposal.

§29-21-11. Public defender corporations — Funding applications; legal representation plans; review.

1 (a) Any public defender corporation established by
2 section eight of this article or any other entity wishing
3 to take advantage of state financial assistance through
4 the agency must submit a funding application to the
5 executive director.

6 (b) The funding application, which is to be submitted
7 in a form prescribed by the executive director, shall
8 contain a general description of the plans and policies
9 the applicant intends to utilize in providing legal
10 representation, and such other information prescribed
11 by the executive director.

12 (c) All applications for financial assistance from
13 public defender services under the provisions of this

14 article must be submitted to the circuit judges of the
15 circuit for review prior to their submission to public
16 defender services.

17 (d) Completed applications shall include:

18 (1) All comments and recommendations made by the
19 circuit judges, along with a statement that such
20 comments have been considered prior to submission of
21 the application; or

22 (2) If no comments have been received from circuit
23 judges, a statement that the procedures outlined in this
24 section have been followed and that no comments or
25 recommendations have been received.

26 (e) Reviews required under this section shall be
27 completed by circuit judges within fifteen days after
28 receipt. If the public defender corporation or other
29 applicant has not received a response within the fifteen-
30 day period, the public defender corporation may
31 consider the judge to have waived his opportunity to
32 review and comment on the proposed program or
33 program modification and may submit the application
34 to public defender services.

§29-21-12. Public defender corporation funding applications.

1 (a) If an application does not carry evidence that
2 appropriate circuit judges have been given an opportu-
3 nity to review the application, the application shall be
4 returned with instructions to fulfill the requirements of
5 section eleven of this article.

6 (b) The executive director shall within seven working
7 days after taking any major action on an application
8 notify the circuit judges who have reviewed the appli-
9 cation of the action taken. Major actions will include
10 program approvals, rejections, returns for amendment,
11 deferrals or withdrawals.

12 (c) If a judge has recommended against approval, or
13 has recommended approval only with specific and major
14 substantive changes, and the executive director ap-
15 proves the application substantially as submitted, the

16 executive director shall provide the judge with an
17 explanation of the approval of the application.

**§29-21-13. Approval of public defender corporation
funding applications; funding; compensa-
tion of corporations and panel attorneys;
record keeping by public defender
corporations.**

1 (a) The accounting and auditing division shall review
2 all funding applications and prepare recommendations
3 for an operating plan and budget. The executive
4 director shall review the funding applications and the
5 accounting and auditing recommendations and shall, in
6 consultation with the applicants, prepare a plan for
7 providing legal services to the area which is the subject
8 of the funding application.

9 (b) Upon final approval of a funding application by
10 the executive director, the approved budget shall be set
11 forth in an approval notice. The total cost to the agency
12 shall not exceed the amount set forth in the approval
13 notice and the agency shall not be obligated to reim-
14 burse the recipient for costs incurred in excess of such
15 amount unless and until a program modification has
16 been approved in accordance with the provisions of this
17 article, revising the total costs of the program.

18 (c) Funding of public defender corporations or other
19 programs or entities providing legal representation
20 under the provisions of this article shall be by annual
21 grants disbursed in such periodic allotments as the
22 executive director shall deem appropriate.

23 (d) All recipients of funding under this article shall
24 maintain such records as required by the executive
25 director.

26 (e) All panel attorneys shall maintain detailed and
27 accurate records of the time expended and expenses
28 incurred on behalf of eligible clients, and upon comple-
29 tion of each case, exclusive of appeal, shall submit to the
30 appointing court a voucher for services. Claims for fees
31 and expense reimbursements shall be submitted to the
32 appointing court on forms approved by the executive

33 director and shall meet the requirements of subsection
34 (i) of this section. The appointing court shall review the
35 voucher to determine if the time and expense claims are
36 reasonable, necessary and valid and shall forward such
37 voucher to the agency, with an order approving payment
38 of the claimed amount or of such lesser sum the court
39 considers appropriate: *Provided*, That notwithstanding
40 any other provision of this section, public defender
41 services may pay by direct bill, prior to the completion
42 of the case, litigation expenses incurred by attorneys
43 appointed under this article.

44 (f) In each case in which a panel attorney provides
45 legal representation under this article, and in each
46 appeal after conviction in circuit court, the panel
47 attorney shall be compensated at the following rates for
48 actual and necessary time expended:

49 (1) For work performed out of court, compensation
50 shall be at the rate of twenty dollars per hour. Out-of-
51 court work shall include, but not be limited to, travel,
52 interviews of clients or witnesses, preparation of
53 pleadings, and prehearing or pretrial research.

54 (2) For work performed in court, compensation shall
55 be at the rate of twenty-five dollars per hour. In-court
56 work shall include, but not be limited to, all time spent
57 awaiting hearing or trial if the presence of the attorney
58 is required at the time.

59 (3) The maximum amount of compensation for out-of-
60 court and in-court work under this subsection is one
61 thousand dollars: *Provided*, That if the eligible client is
62 charged with a felony for which a penalty of life
63 imprisonment may be imposed, the court may approve
64 additional compensation for further work at one half the
65 rates provided in this subsection.

66 (g) Actual and necessary expenses incurred in provid-
67 ing legal representation, including, but not limited to,
68 expenses for travel, transcripts, salaried or contracted
69 investigative services, and expert witnesses shall be
70 reimbursed to a maximum of five hundred dollars
71 unless the court, for good cause shown, gives advance
72 approval to incur expenses for a larger sum. Expense

73 vouchers shall specifically set forth the nature, amount
74 and purpose of expenses incurred and shall provide such
75 receipts, invoices or other documentation required by
76 the executive director.

77 (h) For purposes of compensation under this section,
78 an appeal to the supreme court of appeals from a final
79 order of the circuit court shall be considered a separate
80 case.

81 (i) Vouchers submitted under this section shall
82 specifically set forth the nature of the service rendered,
83 the stage of proceeding or type of hearing involved, the
84 date and place the service was rendered and the amount
85 of time expended in each instance. All time claimed on
86 the vouchers shall be itemized to the nearest tenth of an
87 hour. If the charge against the eligible client for which
88 services were rendered is one of several charges
89 involving multiple warrants or indictments, the voucher
90 shall indicate such fact and sufficiently identify the
91 several charges so as to enable the court to avoid a
92 duplication of compensation for services rendered. The
93 voucher shall indicate whether the services were
94 rendered by a local panel attorney, a regional panel
95 attorney, or such other private attorney as may have
96 been appointed. The executive director shall refuse to
97 requisition payment for any voucher which is not in
98 conformity with the record keeping, compensation or
99 other provisions of this article and in such circumstance
100 shall return the voucher to the court for further review.

§29-21-14. Limitation on use of funds; exceptions.

1 (a) Funds made available by the agency to public
2 defender corporations or other entities under this
3 article, either by loan, grant or contract, and funds used
4 for payments to panel attorneys shall be used only to
5 provide legal representation for eligible clients involved
6 in proceedings defined by this article as eligible
7 proceedings.

8 (b) Funds received from any source other than the
9 agency shall not be used by a public defender corpora-
10 tion for purposes prohibited by this article.

§29-21-15. Public defender corporations—Board of directors.

1 (a) The governing body of each public defender
2 corporation shall be a board of directors consisting of
3 persons who are residents of the area to be served by
4 the public defender corporation.

5 (1) In multi-county circuits, and in the case of multi-
6 circuit or regional corporations, the county commission
7 of each county within the area served shall appoint a
8 director, who shall not be an attorney-at-law. The
9 president of each county bar association within the area
10 served shall appoint a director, who shall be an attorney-
11 at-law: *Provided*, That in a county where there is not an
12 organized and active bar association, the circuit court
13 shall convene a meeting of the members of the bar of
14 the court resident within the county and such members
15 of the bar shall elect one of their number as a director.
16 The governor shall appoint one director, who shall serve
17 as chairman, who may, but need not, be an attorney-at-
18 law, unless such appointment would result in there
19 being an even number of directors, in which event the
20 governor shall appoint two directors, one of whom may
21 be an attorney-at-law.

22 (2) In single-county circuits, the manner of selecting
23 directors shall be the same as that described in
24 subdivision (1) of this subsection, except that the county
25 commission shall appoint two directors rather than one,
26 and the bar shall appoint two directors rather than one.

27 (b) The board of directors shall have at least four
28 meetings a year. Timely and effective prior public notice
29 of all meetings shall be given, and all meetings shall be
30 public except for those concerned with matters properly
31 discussed in executive session.

32 (c) The board of directors shall establish and enforce
33 broad policies governing the operation of the public
34 defender corporation but shall not interfere with any
35 attorney's professional responsibilities to clients. The
36 duties of the board of directors shall include, but not be
37 limited to, the following:

38 (1) Appointment of the public defender and any
39 assistant public defenders as may be necessary to enable
40 the public defender corporation to provide legal repres-
41 entation to eligible clients; and

42 (2) Approval of the public defender corporation's
43 budget and the fixing of professional salaries; and

44 (3) Renewal of the employment contract of the public
45 defender on an annual basis except where such renewal
46 is denied for cause: *Provided*, That the board of directors
47 shall have the power at any time to remove the public
48 defender for misfeasance, malfeasance or nonfeasance.

49 (d) To the extent that the provisions of chapter thirty-
50 one of this code regarding nonprofit corporations are not
51 inconsistent with this article, the provisions of such
52 chapter shall be applicable to the board of directors of
53 the public defender corporation.

54 (e) While serving on the board of directors, no
55 member may receive compensation from the public
56 defender corporation, but a member may receive
57 payment for normal travel and other out-of-pocket
58 expenses required for fulfillment of the obligations of
59 membership.

**§29-21-16. Determination of maximum income levels;
eligibility guidelines; use of form affidavit;
inquiry by court; denial of services; repay-
ment; limitation on remedies against
affiant.**

1 (a) The agency shall establish, and periodically review
2 and update financial guidelines for determining eligibil-
3 ity for legal representation made available under the
4 provisions of this article. The agency shall adopt a
5 financial affidavit form for use by persons seeking legal
6 representation made available under the provisions of
7 this article.

8 (b) All persons seeking legal representation made
9 available under the provisions of this article shall
10 complete the agency's financial affidavit form, which
11 shall be considered as an application for the provision
12 of publicly funded legal representation.

13 Any juvenile shall have the right to be effectively
14 represented by counsel at all stages of proceedings
15 brought under the provisions of article five, chapter
16 forty-nine of this code. If the child advises the court of
17 his or her inability to pay for counsel, the court shall
18 require the child's parent or custodian to execute a
19 financial affidavit. If the financial affidavit demon-
20 strates that neither of the child's parents, or, if
21 applicable, the child's custodian, has sufficient assets to
22 pay for counsel, the court shall appoint counsel for the
23 child. If the financial affidavit demonstrates that either
24 of the child's parents, or, if applicable, the child's
25 custodian, does have sufficient assets to pay for counsel,
26 the court shall order the parent, or, if applicable, the
27 custodian, to provide, by paying for, legal representation
28 for the child in the proceedings: *Provided*, That the
29 court may disregard the assets of the child's parents or
30 custodian and appoint counsel for the child, as provided
31 above, if the court concludes, as a matter of law, that
32 the child and the parent or custodian have a conflict of
33 interest that would adversely affect the child's right to
34 effective representation of counsel, or concludes, as a
35 matter of law, that requiring the child's parent or
36 custodian to provide legal representation for the child
37 would otherwise jeopardize the best interests of the
38 child.

39 (c) In circuits in which no public defender office is in
40 operation, circuit judges shall make all determinations
41 of eligibility. In circuits in which a public defender
42 office is in operation, all determinations of indigency
43 shall be made by a public defender office employee
44 designated by the executive director. Such determina-
45 tions shall be made after a careful review of the
46 financial affidavit submitted by the person seeking
47 representation. The review of the affidavit shall be
48 conducted in accord with the financial eligibility
49 guidelines established by the agency pursuant to
50 subsection (a) of this section. In addition to the financial
51 eligibility guidelines, the person determining eligibility
52 shall consider other relevant factors, including, but not
53 limited to, those set forth in subdivisions (1) through
54 (8) of subsection (d) of this section. If there is substan-

55 tial reason to doubt the accuracy of information in the
56 financial affidavit, the person determining eligibility
57 may make such inquiries as are necessary to determine
58 whether the affiant has truthfully and completely
59 disclosed the required financial information. After
60 reviewing all pertinent matters the person determining
61 eligibility may find the affiant to be eligible to have the
62 total cost of legal representation provided by the state,
63 or may find that the total cost of providing representa-
64 tion shall be apportioned between the state and the
65 eligible person. A person whose annual income exceeds
66 the maximum annual income level allowed for eligibility
67 may receive all or part of the necessary legal represen-
68 tation, or a person whose income falls below the
69 maximum annual income level for eligibility may be
70 denied all or part of the necessary legal representation
71 if the person determining eligibility finds the person's
72 particular circumstances require that eligibility be
73 allowed or disallowed, as the case may be, on the basis
74 of one or more of the eight factors set forth in subsection
75 (d) of this section. If legal representation is made
76 available to a person whose income exceeds the maxi-
77 mum annual income level for eligibility, or if legal
78 representation is denied to a person whose income falls
79 below the maximum annual income level for eligibility,
80 the person determining eligibility shall make a written
81 statement of the reasons for the action and shall
82 specifically relate those reasons to one or more of the
83 factors set forth in subsection (d) of this section.

84 (d) The following factors shall be considered in
85 determining eligibility for legal representation made
86 available under the provisions of this article:

87 (1) Current income prospects, taking into account
88 seasonal variations in income;

89 (2) Liquid assets, assets which may provide collateral
90 to obtain funds to employ private counsel and other
91 assets which may be liquidated to provide funds to
92 employ private counsel;

93 (3) Fixed debts and obligations, including federal,
94 state and local taxes and medical expenses;

95 (4) Child care, transportation and other expenses
96 necessary for employment;

97 (5) Age or physical infirmity of resident family
98 members;

99 (6) Whether the person seeking publicly funded legal
100 representation has made reasonable and diligent efforts
101 to obtain private legal representation, and the results of
102 those efforts;

103 (7) The cost of obtaining private legal representation
104 with respect to the particular matter in which assistance
105 is sought; and

106 (8) The consequences for the individual if legal
107 assistance is denied.

108 (e) Legal representation requested by the affiant may
109 not be denied in whole or part unless the affiant can
110 obtain legal representation without undue financial
111 hardship. Persons determined to be eligible by public
112 defender personnel may have the initial determination
113 reviewed by a local circuit judge who may amend,
114 modify or rewrite the initial determination. At any stage
115 of the proceedings a circuit court may determine a prior
116 finding of eligibility was incorrect or has become
117 incorrect as the result of the affiant's changed financial
118 circumstances, and may revoke any prior order provid-
119 ing legal representation. In such event any attorney
120 previously appointed shall be entitled to compensation
121 under the provisions of law applicable to such appoint-
122 ment for services already rendered.

123 (f) In the circumstances and manner set forth below,
124 circuit judges may order repayment to the state,
125 through the office of the clerk of the circuit court having
126 jurisdiction over the proceedings, of the costs of
127 representation provided under this article:

128 (1) In every case in which services are provided to an
129 indigent person and an adverse judgment has been
130 rendered against such person, the court may require
131 that person, and in juvenile cases, may require the
132 juvenile's parents or custodian, to pay as costs the
133 compensation of appointed counsel, the expenses of the

134 defense and such other fees and costs as authorized by
135 statute.

136 (2) The court shall not order a person to pay costs
137 unless the person is able to pay without undue hardship.
138 In determining the amount and method of repayment of
139 costs, the court shall take account of the financial
140 resources of the person, the person's ability to pay and
141 the nature of the burden that payment of costs will
142 impose. The fact that the court initially determines, at
143 the time of a case's conclusion, that it is not proper to
144 order the repayment of costs does not preclude the court
145 from subsequently ordering repayment should the
146 person's financial circumstances change.

147 (3) When a person is ordered to repay costs, the court
148 may order payment to be made forthwith or within a
149 specified period of time or in specified installments. If
150 a person is sentenced to a term of imprisonment, an
151 order for repayment of costs is not enforceable during
152 the period of imprisonment unless the court expressly
153 finds, at the time of sentencing, that the person has
154 sufficient assets to pay the amounts ordered to be paid
155 or finds there is a reasonable likelihood the person will
156 acquire the necessary assets in the foreseeable future.

157 (4) A person who has been ordered to repay costs, and
158 who is not in contumacious default in the payment
159 thereof, may at any time petition the sentencing court
160 for modification of the repayment order. If it appears
161 to the satisfaction of the court that continued payment
162 of the amount ordered will impose undue hardship on
163 the person or the person's dependents, the court may
164 modify the method or amount of payment.

165 (5) When a person ordered to pay costs is also placed
166 on probation or imposition or execution of sentence is
167 suspended, the court may make the repayment of costs
168 a condition of probation or suspension of sentence.

169 (g) Circuit clerks shall keep a record of repaid counsel
170 fees and defense expenses collected pursuant to this
171 section and shall, quarterly, pay the moneys to the state
172 auditor who shall deposit the funds in the general
173 revenue fund of the state.

174 (h) The making of an affidavit subject to inquiry
175 under this section shall not in any event give rise to
176 criminal remedies against the affiant nor occasion any
177 civil action against the affiant except for the recovery
178 of costs as in any other case where costs may be
179 recovered. A person who has made an affidavit knowing
180 the contents thereof to be false may be prosecuted for
181 false swearing as provided by law.

§29-21-17. Private practice of law by public defenders.

1 (a) No full-time public defender or full-time assistant
2 public defender may engage in any private practice of
3 law except as provided in this section.

4 (b) A board of directors may permit a newly em-
5 ployed full-time public defender or full-time assistant
6 public defender to engage in the private practice of law
7 for compensation for the sole purpose of expeditiously
8 closing and withdrawing from existing private cases
9 from a prior private practice. In no event shall any
10 person employed for more than ninety days as a full-
11 time public defender or full-time assistant public
12 defender be engaged in any other private practice of law
13 for compensation.

14 (c) A board of directors may permit a full-time public
15 defender or full-time assistant public defender to engage
16 in private practice for compensation if the defender is
17 acting pursuant to an appointment made under a court
18 rule or practice of equal applicability to all attorneys in
19 the jurisdiction and if the defender remits to the public
20 defender corporation all compensation received.

21 (d) A board of directors may permit a full-time public
22 defender or full-time assistant public defender to engage
23 in uncompensated private practice of law if the public
24 defender or assistant public defender is acting:

25 (1) Pursuant to an appointment made under a court
26 rule or practice of equal applicability to all attorneys in
27 the jurisdiction; or

28 (2) On behalf of a close friend or family member; or

29 (3) On behalf of a religious, community or charitable
30 group.

- 31 (e) Violation of the requirements of this section is
32 sufficient grounds for immediate summary dismissal.

§29-21-18. Records and reports.

1 (a) The agency is authorized to require such reports
2 as it deems necessary from any public defender corpo-
3 ration or other entity or person receiving funding under
4 this article regarding activities carried out pursuant to
5 this article.

6 (b) The agency is authorized to prescribe the keeping
7 of records with respect to the activities of public
8 defender corporations and other grantees, contractors,
9 persons or entities receiving financial assistance under
10 this article and shall have access to such records at all
11 reasonable times for the purpose of ensuring compliance
12 with the terms and conditions upon which financial
13 assistance was provided.

14 (c) Copies of all reports pertinent to the evaluation,
15 inspection, or monitoring of any public defender
16 corporation, other grantee, contractor, person or entity
17 receiving financial assistance under this article shall be
18 maintained by the agency for a period of at least five
19 years subsequent to such evaluation, inspection, or
20 monitoring. Such reports shall be available for public
21 inspection during regular business hours, and copies
22 shall be furnished, upon request, to interested parties
23 upon payment of such reasonable fees as the agency may
24 establish.

§29-21-19. Audits.

1 (a) The accounts of each public defender corporation
2 shall be audited annually. Such audits shall be con-
3 ducted in accordance with generally accepted auditing
4 standards by the state tax commissioner.

5 (b) The audits shall be conducted at the place or
6 places where the accounts of the public defender
7 corporation are normally kept. All books, accounts,
8 financial records, reports, files, and other papers or
9 property belonging to or in use by the public defender
10 corporation and necessary to facilitate the audits shall

11 be made available to the person or persons conducting
12 the audits; and full facilities for verifying transactions
13 with the balances and securities held by depositories,
14 fiscal agents, and custodians shall be afforded to any
15 such person.

16 (c) The report of the annual audit shall be filed with
17 the agency and shall be available for public inspection
18 during business hours at the principal office of the
19 public defender corporation. The report of each such
20 audit shall be maintained for a period of at least five
21 years at the office of the agency.

§29-21-20. Appointed counsel immune from liability.

1 Any attorney who provides legal representation under
2 the provisions of this article under appointment by a
3 circuit court or by the supreme court of appeals, and
4 whose only compensation therefor is paid under the
5 provisions of this article, shall be immune from liability
6 arising from that representation in the same manner
7 and to the same extent that prosecuting attorneys are
8 immune from liability.

CHAPTER 170

(Com. Sub. for S. B. 233—By Senators Rundle and Lucht)

[Passed April 5, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to penalties for accepting money or other things of value for performing or failing to perform duties; contracting for the providing of extraordinary police or security services by the department; procedures; assignment of personnel, equipment or facilities by the superintendent; reimbursement therefor; payment of officer or member; contract to contain provisions relating to public disaster or emergency and reassignment of personnel; requiring provision for indemnity; and authorizing the superintendent to promulgate rules and regulations.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-18. Officers or members performing duties for private persons; general penalty; providing extraordinary police or security services by contract.

1 (a) Any officer or member of the department of public
2 safety who hires himself or herself to any person, firm
3 or corporation to guard private property, or who
4 demands or receives from any person, firm or corpora-
5 tion any money or other thing of value as a consideration
6 for the performance of, or the failure to perform, his or
7 her duties under the regulations of the superintendent
8 and the provisions of this article, shall be guilty of a
9 felony, and, upon conviction thereof, shall be confined in
10 the penitentiary for not less than one nor more than five
11 years, and any such officer or member of the depart-
12 ment of public safety who violates any other provisions
13 of this article, for which no other penalty is expressly
14 provided, shall be guilty of a misdemeanor, and, upon
15 conviction thereof, shall be fined not less than twenty-
16 five dollars nor more than two hundred dollars, or
17 imprisoned in the county jail for not more than four
18 months, or both fined and imprisoned.

19 (b) Notwithstanding any other provision of this
20 article, the superintendent may contract with public,
21 quasi-public, military or private entities to provide
22 extraordinary police or security services by the depart-
23 ment when it is determined by the superintendent to be
24 in the public interest. The superintendent shall assign
25 such personnel, equipment or facilities as is deemed
26 necessary and the department shall be reimbursed for
27 the wages, overtime wages, benefits and costs of
28 providing the contract services as negotiated between
29 the parties. The compensation paid to public safety
30 personnel by virtue of contracts provided for in this
31 section shall be paid from a special account and shall
32 be excluded from any formulation used to calculate an

33 employee's benefits. All requests for obtaining extraor-
34 dinary police or security services shall be made to the
35 superintendent in writing and shall explain the funding
36 source and the authority for making such a request. No
37 officer or member of the department shall be required
38 to accept any assignment made pursuant to this
39 subsection. Every officer or member assigned to duty
40 hereunder shall be paid according to the hours and
41 overtime hours actually worked notwithstanding that
42 officer's or member's status as exempt personnel under
43 the Federal Labor Standards Act or applicable state
44 statutes. Every contract entered into under this subsec-
45 tion shall contain the provision that in the event of
46 public disaster or emergency where the reassignment to
47 official duty of all officers and members is required,
48 neither the department nor any of its officers or
49 members shall be liable for any damages incurred as the
50 result of the reassignment. Further, any entity contract-
51 ing with the department of public safety under this
52 section shall also agree as part of that contract to hold
53 harmless and indemnify the state, department of public
54 safety and its personnel from any liability arising out
55 of employment under the contract. The superintendent
56 is authorized to promulgate legislative rules and
57 regulations in accordance with chapter twenty-nine-a of
58 this code relating to the implementation of any contracts
59 made under this subsection: *Provided*, That said
60 regulations shall expressly prohibit private employment
61 of officers or members in circumstances involving labor
62 disputes.

CHAPTER 171

(Com. Sub. for H. B. 2382—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article thirty-one, chapter sixteen of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended; and to amend chapter fifteen of
said code by adding thereto a new article, designated

article five-a, relating to the West Virginia Emergency Response And Community Right-to-Know Act; setting forth purpose; creating the West Virginia Emergency Response Commission; setting forth responsibilities; providing definitions; referencing certain federal legislation; setting forth composition, organization, qualifications, terms, removal, compensation and meeting requirements for the State Emergency Response Commission; setting forth powers and duties of the commissions; providing for procedural rules; providing for certain fees; setting forth powers and duties of the office of emergency services; providing for the establishment of emergency planning districts and committees; relating to facility fees and a special account to receive such fees; providing for a local grant program; setting forth a mechanism to collect and disseminate information to the public on certain hazardous chemicals and toxic chemicals and to assure that state and local authorities and the public are adequately prepared to respond to releases of hazardous chemicals and toxic chemicals into the environment; providing commission standards and requirements more stringent than federal law; providing for penalties; authorizing the commission to utilize the attorney general in initiating legal actions and penalties; and authorizing the commission to comply with the obligations of the state under federal law.

Be it enacted by the Legislature of West Virginia:

That article thirty-one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter fifteen of said code be amended by adding thereto a new article, designated article five-a, to read as follows:

ARTICLE 5A. WEST VIRGINIA EMERGENCY RESPONSE AND COMMUNITY RIGHT-TO-KNOW ACT.

- §15-5A-1. Declaration of purpose.
- §15-5A-2. Jurisdiction of West Virginia emergency response commission.
- §15-5A-3. Definitions.
- §15-5A-4. State emergency response commission created; composition and organization, qualifications, terms, removal, compensation, meetings.
- §15-5A-5. Powers and duties of the commission.

§15-5A-6. Powers and duties of the office of emergency services.

§15-5A-7. Establishment of emergency planning districts and committees; composition, organization, duties.

§15-5A-8. Severability.

§15-5A-1. Declaration of purpose.

1 The Legislature recognizes that Title III of the
2 Superfund Amendments and Reauthorization Act of
3 1986: The Emergency Planning and Community Right-
4 to-Know Act of 1986, P.L. 99-499, enacted by the United
5 States congress and signed into law on the seventeenth
6 day of October, one thousand nine hundred eighty-six,
7 has two primary objectives, i.e., to require states and
8 local communities to develop comprehensive emergency
9 response plans, and to establish a program for the
10 collection and dissemination to the public of information
11 on certain hazardous chemicals and toxic chemicals in
12 their communities.

13 The purpose of this article is to enable and authorize
14 this state to fulfill its obligations under the federal
15 statute.

§15-5A-2. Jurisdiction of West Virginia emergency response commission.

1 The state emergency response commission shall have
2 within its jurisdiction and supervision the preparation
3 and implementation of comprehensive emergency
4 response plans for each designated emergency planning
5 district within the state so as to comply with the
6 requirements of 42 U.S.C. §11001, et seq. The commis-
7 sion, through the office of emergency services, shall also
8 be responsible for providing the citizens of this state
9 with information in accordance with the requirements
10 of 42 U.S.C. §11001, et seq., and this article. All state
11 agencies shall cooperate with and assist the commission
12 in all commission duties and responsibilities.

§15-5A-3. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (a) "Best management practices" means any practices
4 made applicable to a facility pursuant to section 304(e)

5 of the Clean Water Act and the federal regulations
6 promulgated thereunder.

7 (b) "Clean Water Act" means the Federal Water
8 Pollution Control Act, P.L. 92-500, enacted on the
9 eighteenth day of October, one thousand nine hundred
10 seventy-two, and all subsequent amendments to that act.

11 (c) "Code" means the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended.

13 (d) "Commission" means the state emergency response
14 commission.

15 (e) "Committee" means a local emergency planning
16 committee.

17 (f) "Emergency planning district" means a geogra-
18 phic area designated by the commission as requiring its
19 own comprehensive emergency response plan. The
20 commission may designate existing political subdivi-
21 sions or multijurisdictional planning organizations as
22 such districts.

23 (g) "Facility" means a facility subject to the provisions
24 of 42 U.S.C. §11001, et seq., and this article, pursuant
25 to the provisions of 42 U.S.C. §11002.

26 (h) "Local emergency planning committee" means
27 that group of persons, for each emergency planning
28 district, who are appointed by the state emergency
29 response commission in accordance with the provisions
30 of section seven of this article.

31 (i) "Resource Conservation and Recovery Act" means
32 P.L. 94-580, enacted on the twenty-first day of October,
33 one thousand nine hundred seventy-six, and all subse-
34 quent amendments to that act.

35 (j) "Spill prevention control and countermeasure
36 plan" means any plan developed pursuant to section
37 112.3 of title 40 of the code of federal regulations.

38 (k) "Title III" means the Emergency Planning and
39 Community Right-to-Know Act of 1986, P.L. 99-499.

§15-5A-4. State emergency response commission created; composition and organization, qualifications, terms, removal, compensation, meetings.

1 (a) There is hereby created the state emergency
2 response commission.

3 (b) The state emergency response commission shall
4 consist of eleven members, including the director of the
5 department of natural resources, the director of the
6 health department, the director of the air pollution
7 control commission, the director of the office of emer-
8 gency services, the superintendent of the department of
9 public safety, the commissioner of the department of
10 highways; one designee of the public service commission
11 and one designee of the state fire marshal, all of whom
12 shall be members ex officio. A representative from the
13 chemical industry, a representative of a municipal or
14 volunteer fire department and a representative of the
15 public who shall be knowledgeable in the area of
16 emergency response shall be appointed by the governor
17 as public members of the state emergency response
18 commission. The director of the office of emergency
19 services shall serve as the chairman of the commission
20 and shall cast a vote only in the event of a tie vote.
21 Members shall serve without compensation, but shall be
22 reimbursed for all reasonable and necessary expenses
23 actually incurred in the performance of their duties
24 under this article. The initial public members appointed
25 by the governor shall serve for a term ending on the first
26 day of July, one thousand nine hundred ninety-one. A
27 successor to a public member of the commission shall
28 be appointed in the same manner as the original public
29 members and shall have a term of office expiring two
30 years from the date of the expiration of the term for
31 which his predecessor was appointed. In cases of any
32 vacancy among the public members, such vacancy shall
33 be filled by appointment by the governor. Any member
34 appointed to fill a vacancy on the commission occurring
35 prior to the expiration of the term for which his
36 predecessor was appointed shall be appointed for the
37 remainder of such term. Members appointed by the
38 governor may be removed by the governor in case of

39 incompetency, neglect of duty, gross immorality or
40 malfeasance in office.

41 (c) The commission shall elect from its membership
42 a vice chairman and appoint a secretary. The secretary
43 need not be a member of the commission. The vice
44 chairman shall preside over the meetings and hearings
45 of the commission in the absence of the chairman. The
46 commission may appoint and employ such personnel as
47 may be required, whose duties shall be defined by the
48 commission and whose compensation, to be fixed by the
49 commission, shall be paid out of the state treasury, upon
50 the requisition of the commission, from moneys approp-
51 riated for such purposes.

52 (d) The commission may establish procedural rules in
53 accordance with chapter twenty-nine-a of the code for
54 the regulation of its affairs and the conduct of all
55 proceedings before it. All proceedings of the commission
56 shall be entered in a permanently bound record book,
57 properly indexed, and the same shall be carefully
58 preserved and attested by the secretary of the commis-
59 sion. The commission shall meet at such times and
60 places as may be agreed upon by the commissioners, or
61 upon the call of the chairman of the commission or any
62 two members of the commission, all of which meetings
63 shall be general meetings for the consideration of any
64 and all matters which may properly come before the
65 commission. A majority of the commission shall consti-
66 tute a quorum for the transaction of business.

§15-5A-5. Powers and duties of the commission.

1 The commission shall have and may exercise the
2 following powers and authority and shall perform the
3 following duties:

4 (a) Designate emergency planning districts;

5 (b) Appoint local emergency planning committees for
6 each emergency planning district and supervise and
7 coordinate the activities of such committees;

8 (c) Revise any designations and appointments made
9 under subsections (a) and (b) of this section as it deems
10 appropriate: *Provided*, That any interested person may

11 petition the state emergency response commission to
12 modify the membership of a local emergency planning
13 commission;

14 (d) Designate, if necessary, additional facilities which
15 shall be subject to the requirements of this article,
16 provided such designation is made after public notice
17 and opportunity for comment as provided under article
18 three, chapter twenty-nine-a of the code;

19 (e) Review the emergency response plans submitted
20 by the local emergency planning committees and make
21 recommendations to the local committees on revisions of
22 the plan that may be necessary to ensure coordination
23 of such plan with the plans of other emergency planning
24 districts and other existing state and local emergency
25 response plans;

26 (f) Enter into cooperative agreements with other state
27 agencies designating specific responsibilities to be
28 performed by such state agencies to implement the
29 provisions of this article;

30 (g) Promulgate procedural rules in accordance with
31 the provisions of article three, chapter twenty-nine-a of
32 this code, establishing rules of practice before the
33 commission;

34 (h) Promulgate procedural rules in accordance with
35 the provisions of article three, chapter twenty-nine-a of
36 this code, establishing procedures for receiving and
37 processing requests from the public for information in
38 accordance with the provisions of 42 U.S.C. §11001, et
39 seq., and this article, and prescribing forms and
40 instructions for requesting such information;

41 (i) Promulgate procedural rules in accordance with
42 the provisions of article three, chapter twenty-nine-a of
43 this code, prescribing forms and instructions for the
44 submission and receipt of confidential information;

45 (j) Promulgate rules establishing the following fees
46 which shall be deposited in a special account for the
47 administration of this act and which shall be reasonably
48 calculated to recover the necessary expenses incurred by

49 the office of emergency services in the administration
50 of this article:

51 (1) An emergency planning notification fee not to
52 exceed one hundred dollars to be paid by a facility when
53 it makes the emergency planning notification required
54 under SARA, Title III, sections 301 through 303;

55 (2) An inventory form fee not to exceed one hundred
56 dollars to be paid annually by a facility when it submits
57 the emergency and hazardous chemical inventory forms
58 or material safety data sheet required under SARA,
59 Title III, sections 311 and 312; and

60 (3) A surcharge fee not to exceed twenty percent of
61 the fee otherwise payable to be paid by facilities which
62 fail to pay the fees in paragraphs (1) and (2) in a timely
63 manner;

64 (k) Establish an emergency planning grant program
65 to be administered by the commission. The grant
66 programs will be funded by fees collected to administer
67 this act pursuant to subdivision (j) of this section. The
68 commission shall promulgate rules which establish the
69 method of awarding such grants to local emergency
70 planning committees to assist them in performing their
71 responsibilities under this article; and

72 (l) Promulgate legislative rules in accordance with
73 the provisions of article three, chapter twenty-nine-a of
74 this code necessary to implement the provisions of this
75 article.

76 (m) The chairman of the commission may order a
77 facility owner or operator to comply with the require-
78 ments of applicable federal law, this article and any
79 rules or regulations promulgated thereunder. When the
80 chairman has reasonable cause to believe that there
81 exists a failure to comply with the provisions of
82 applicable federal law, this article or any rule or
83 regulation promulgated thereunder or any order
84 entered by the chairman, he may request the attorney
85 general to commence an action for civil penalties,
86 injunctive relief or other appropriate relief to enforce
87 such provisions, rules and regulations or order. Such

88 action may be brought in any federal district court
89 having jurisdiction, or in the circuit court of Kanawha
90 county or the county where the facility or a major
91 portion thereof is located.

§15-5A-6. Powers and duties of the office of emergency services.

1 The office of emergency services, as created by article
2 five, chapter fifteen of the code of West Virginia, shall
3 perform the administrative duties of the state emer-
4 gency response commission. The administrative duties
5 to be performed by the office of emergency services shall
6 include, but shall not be limited to, the following:

7 (a) Receive, catalogue and organize information
8 required to be submitted to the commission;

9 (b) Utilize existing state response organizations, plans
10 and facilities to the extent possible;

11 (c) Upon concurrence of the commission, enter into
12 training exercise agreements with federal response
13 agencies;

14 (d) Coordinate with other state agencies on training
15 for first responders and emergency service personnel;

16 (e) Respond to requests to the commission from the
17 public for information pursuant to this act;

18 (f) Perform such preliminary analysis and collect
19 such information as may be required to enable the
20 commission to fully review local emergency response
21 plans; and

22 (g) The director may employ such clerical and
23 technical personnel and acquire data management and
24 other equipment and office space as may be necessary
25 to carry out the provisions of this act.

§15-5A-7. Establishment of emergency planning districts and committees; composition, organization, duties.

1 (a) The state emergency response commission shall
2 designate emergency planning districts in order to
3 facilitate preparation and implementation of emergency

4 plans. After designating emergency planning districts,
5 the state emergency response commission shall appoint
6 members of a local emergency planning committee for
7 each emergency planning district. Each committee shall
8 include representatives from each of the following
9 groups or organizations: (1) Elected state and local
10 officials; (2) law enforcement, civil defense, fire fighting,
11 first aid, health, local environmental, hospital and
12 transportation personnel; (3) broadcast and print media;
13 (4) community groups; and (5) owners and operators of
14 facilities subject to the requirements of this article. In
15 addition to the above members, each county commission
16 president from every county within the district, or a
17 member of the county commission designated by the
18 president, shall be appointed as a member of the
19 committee and such appointment may fulfill the
20 requirement to appoint elected local officials.

21 (b) Each local committee shall appoint a chairperson
22 and establish procedural rules by which the committee
23 shall function. Such rules shall include provisions for
24 public notification of committee activities, public
25 meetings to discuss the emergency plan, public com-
26 ments, response to such comments by the committee and
27 distribution of the emergency plan.

28 (c) The local committees shall submit their proposed
29 procedural rules to the state emergency response
30 commission for review and comment no later than the
31 first day of January, one thousand nine hundred ninety.
32 If any local committees fail to submit proposed proced-
33 ural rules, the state emergency response commission
34 shall itself promulgate rules applicable to such local
35 committees.

36 (d) The local emergency planning committee shall
37 have and may exercise the following powers and
38 authority and shall perform the following duties:

39 (1) Establish procedures for receiving and processing
40 requests from the public for information regarding any
41 emergency response plan, material safety data sheet,
42 emergency, first aid and medical treatment procedures,
43 list described in 42 U.S.C. §11021(a)(2), inventory form,

44 toxic chemical release form, or followup emergency
45 notice, including tier II information under 42 U.S.C.
46 §11022;

47 (2) Designate an official to serve as coordinator for
48 information for processing requests for information
49 from the public;

50 (3) Develop and implement a comprehensive emer-
51 gency response plan in accordance with 42 U.S.C.
52 §11003, and review such plan once a year, or more
53 frequently as changed circumstances in the community
54 or at any facility may require: *Provided*, That such
55 comprehensive emergency response plans may not
56 require a covered facility to revise, modify or otherwise
57 alter any emergency release response or release preven-
58 tion plan that has been prepared pursuant to any other
59 state or federal statute or regulation including, but not
60 limited to, contingency plans developed under the
61 Resource Conservation and Recovery Act, Spill Preven-
62 tion and Countermeasure Plans, or Best Management
63 Practices Plans developed under the Clean Water Act;

64 (4) Prior to implementation, submit a copy of the
65 prepared emergency response plan to the state emer-
66 gency response commission for review and
67 recommendation;

68 (5) Publish annually a notice in local newspapers that
69 the emergency response plan is available for review, as
70 are those material safety data sheets, emergency, first
71 aid and medical treatment procedures, inventory forms
72 and followup emergency notices which have been
73 submitted to the committee. The notice shall also state
74 that members of the public who wish to review any such
75 plan, sheet, form or followup notice may do so at a
76 designated location;

77 (6) Establish deadlines for responding to information
78 requests from the public; and

79 (7) Receive, catalogue and organize information
80 required to be submitted to the committee under the
81 provisions of 42 U.S.C. §11001, et seq.

§15-5A-8. Severability.

1 The provisions of this article are severable and if any
2 provision, section or part thereof shall be held invalid,
3 unconstitutional or inapplicable to any person or
4 circumstance, such invalidity, unconstitutionality or
5 inapplicability shall not affect or impair any of the
6 remaining provisions, sections or parts of the article or
7 their application to him or to other persons and
8 circumstances. It is hereby declared to be the legislative
9 intent that this article would have been adopted if such
10 invalid or unconstitutional provisions, section or part
11 had not been included therein.

CHAPTER 172

(Com. Sub. for H. B. 2621—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections one-d and one-e, all relating to future electric generating capacity requirements of electric utilities in West Virginia and rate recovery for construction of electric transmission facilities.

Be it enacted by the Legislature of West Virginia:

That article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections one-d and one-e, all to read as follows:

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1d. Future electric generating capacity requirements.

§24-2-1e. Rate recovery for construction of electric transmission facilities.

§24-2-1d. Future electric generating capacity requirements.

1 (a) In order to maximize the use of electricity

2 generated within the state by using coal or natural gas
3 produced within the state, the public service commission
4 shall by order, no later than the thirty-first day of
5 December, one thousand nine hundred eighty-nine,
6 establish the schedule and amount of future electric
7 generating capacity additions required by each West
8 Virginia electric utility, for the next ten years, taking
9 into account: (i) Projected load growth; (ii) existing
10 generating capacity; (iii) existing contractual commit-
11 ments to sell or purchase capacity; (iv) planned retire-
12 ment and life extensions of existing capacity; (v) planned
13 construction of capacity; (vi) availability of capacity
14 from generating units of affiliated companies; and (vii)
15 such other reasonable factors as the commission may
16 deem relevant and appropriate to consider.

17 (b) If the commission determines after considering all
18 such named and other relevant and appropriate factors
19 that a utility will be required to purchase electric
20 generating capacity beyond those agreements approved
21 by the Federal Energy Regulatory Commission or the
22 West Virginia public service commission in order to
23 serve its West Virginia customers, the amount of such
24 required additional purchased capacity so identified by
25 the commission will for purposes of this section be
26 referred to as the utility's "projected deficient capacity":
27 *Provided*, That this subsection shall not include power
28 generating facilities whose total production of electricity
29 is sold outside the state of West Virginia.

30 (c) In the interests of: Keeping utility rates of
31 residential customers as low as possible; keeping utility
32 rates for commercial and industrial customers compet-
33 itive with those of other states; attracting new industry
34 for which electric power costs are a major factor in
35 location determinations; and of not placing any greater
36 cost burden on government than is absolutely necessary
37 for its electric power needs, each utility shall acquire,
38 if reasonable, its projected deficient capacity from
39 electric generation situate in West Virginia which burns
40 coal or gas produced in West Virginia and which will
41 provide the most reliable supply of capacity and energy
42 at the least cost to those customers of the utility who will
43 be served by such electric generation: *Provided*, That all

44 power purchase contracts executed prior to the effective
45 date of this section which satisfy the following require-
46 ments, regardless of location, shall be considered, for the
47 purposes of this subsection, as electric generation situate
48 in West Virginia: (1) Said contracts were negotiated in
49 accordance with procedures and priced according to
50 methodologies of other contracts which the commission
51 has ordered approved; (2) said contracts either guaran-
52 tee or are substantially amended to guarantee for the
53 life of the contract the use of an amount of West
54 Virginia fuel which equals or exceeds the amount which
55 would be required, on a percentage of output basis, to
56 produce the amount of electric power to be consumed
57 in West Virginia; and (3) said contracts meet the
58 requirements for a qualifying facility established by the
59 Federal Energy Regulatory Commission pursuant to the
60 Public Utility Regulatory Policies Act of 1978.

§24-2-1e. Rate recovery for construction of electric transmission facilities.

1 In order to encourage the construction of transmission
2 facilities necessary to transmit electric power from
3 generating facilities located in this state to areas where
4 such power can be economically marketed, the commis-
5 sion may allow an electric utility accelerated rate
6 recovery for transmission facilities constructed or
7 upgraded for the purpose of increasing the capacity to
8 transmit electric power to areas outside the utility's
9 service territory where such power can be economically
10 marketed. In allowing accelerated rate recovery, the
11 commission shall include the impact of the investment
12 in transmission facilities on any investment equalization
13 agreement in which the utilities participate.

CHAPTER 173

(H. B. 2608—By Mr. Speaker, Mr. Chambers, and Delegate Murensky)

[Passed April 4, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty-four of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to telemetry systems on railroads; providing definitions; requiring telemetry systems on certain railroad trains in lieu of cabooses; prohibiting retaliation for reporting violations; and requiring the telemetry system to be capable of emergency braking, beginning the first day of July, one thousand nine hundred ninety-one.

Be it enacted by the Legislature of West Virginia:

That article three, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one-a, to read as follows:

**ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES
SUBJECT TO REGULATIONS OF COMMISSION.**

§24-3-1a. Definitions; telemetry systems required.

1 (a) As used in this article:

2 (1) "Head end device" means a device located on the
3 lead locomotive of a railroad train designed to receive
4 information from the rear end device. It may also be
5 used to transmit information to the rear end device;

6 (2) "Mainline" means a railroad track extending
7 through railroad yards and between stations which must
8 not be occupied without authority or protection;

9 (3) "Rear end device" means a device located on the
10 rear car of a railroad train designed to transmit
11 information to the head end device and equipped with
12 a rear marker light, red in color, and at least one
13 hundred, but not more than one thousand, candela. It
14 may also be used to receive information from the head
15 end device;

16 (4) "Telemetry system" means a radio transmitter and
17 receiver system between a front end device and a rear
18 end device which indicates through a display at the head
19 end device the following:

- 20 (i) Brake pipe pressure at the rear of the train,
21 displayed in increments of one pound per square inch;
- 22 (ii) Rear car movement;
- 23 (iii) Whether the rear marker light is operating;
- 24 (iv) Remaining battery life powering the system;
- 25 (v) Any interruption in radio transmission as estab-
26 lished by a distance measuring device at the rear end
27 device; and
- 28 (vi) The location of the rear of the train as established
29 by a distance measuring device at the rear end device.
- 30 (b) It is unlawful to operate a railroad train over one
31 thousand five hundred feet in length on any mainline
32 track within any railroad yard, without an occupied
33 caboose as the rear car of such train unless it is
34 equipped with an operable telemetry system.
- 35 (c) No train may depart any crew change point or its
36 point of origin unless the train is equipped with
37 telemetry system as required by this article. Any
38 inoperable system shall be repaired or replaced before
39 leaving the point of origin or at crew change point.
- 40 (d) The rear marker light required by this article
41 shall be flashing during the period from one hour before
42 sunset until one hour after sunrise.
- 43 (e) Beginning the first day of July, one thousand nine
44 hundred ninety-one, all telemetry devices shall be
45 equipped so that an emergency application of the brakes
46 of the train can be initiated at the rear car of the train
47 either by the engineer in the lead or controlling
48 locomotive or by a crew member riding on the rear car.
- 49 It is unlawful to institute any disciplinary action or
50 other adverse administrative or employment action
51 against any person who reports a violation or acts to
52 enforce the provisions of this article. Such person's
53 remedies under this chapter shall be in addition to any
54 other remedies that might be available to such person.

CHAPTER 174

(H. B. 2108—By Delegates Phillips and Roop)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and thirteen, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public service districts; requiring certain information in applications for service; requiring security deposits from new applicants; requiring certain notices of delinquency and termination of service; specifying certain conditions and procedures for termination of service; and adjusting the interest rate and interest cost of the proceeds on public service district revenue bonds.

Be it enacted by the Legislature of West Virginia:

That sections nine and thirteen, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

§16-13A-9. Rules and regulations; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

§16-13A-13. Revenue bonds.

§16-13A-9. Rules and regulations; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

1 The board may make, enact and enforce all needful
2 rules and regulations in connection with the acquisition,
3 construction, improvement, extension, management,
4 maintenance, operation, care, protection and the use of
5 any public service properties owned or controlled by the
6 district, and the board shall establish rates and charges
7 for the services and facilities it furnishes, which shall
8 be sufficient at all times, notwithstanding the provisions

9 of any other law or laws, to pay the cost of maintenance,
10 operation and depreciation of such public service
11 properties and principal of and interest on all bonds
12 issued, other obligations incurred under the provisions
13 of this article and all reserve or other payments
14 provided for in the proceedings which authorized the
15 issuance of any bonds hereunder. The schedule of such
16 rates and charges may be based upon either (a) the
17 consumption of water or gas on premises connected with
18 such facilities, taking into consideration domestic,
19 commercial, industrial and public use of water and gas;
20 or (b) the number and kind of fixtures connected with
21 such facilities located on the various premises; or (c) the
22 number of persons served by such facilities; or (d) any
23 combination thereof; or (e) may be determined on any
24 other basis or classification which the board may
25 determine to be fair and reasonable, taking into
26 consideration the location of the premises served and the
27 nature and extent of the services and facilities fur-
28 nished. Where water, sewer and gas services are all
29 furnished to any premises, the schedule of charges may
30 be billed as a single amount for the aggregate thereof.
31 The board shall require all users of services and
32 facilities furnished by the district to designate on every
33 application for service whether the applicant is a tenant
34 or an owner of the premises to be served. If the
35 applicant is a tenant, he shall state the name and
36 address of the owner or owners of the premises to be
37 served by the district. All new applicants for service
38 shall deposit a minimum of fifty dollars with the district
39 to secure the payment of service rates and charges in
40 the event they become delinquent as provided in this
41 section. In any case where a deposit is forfeited to pay
42 service rates and charges which were delinquent at the
43 time of disconnection or termination of service, no
44 reconnection or reinstatement of service may be made
45 by the district until another minimum deposit of fifty
46 dollars has been remitted to the district. Whenever any
47 rates, rentals or charges for services or facilities
48 furnished remain unpaid for a period of thirty days
49 after the same become due and payable, the property
50 and the owner thereof, as well as the user of the services

51 and facilities provided shall be delinquent and the
52 owner, user and property shall be held liable at law
53 until such time as all such rates and charges are fully
54 paid: *Provided*, That the property owner shall be given
55 notice of any said delinquency by certified mail, return
56 receipt requested. The board may, under reasonable
57 rules and regulations promulgated by the public service
58 commission, shut off and discontinue water or gas
59 services to all delinquent users of either water or gas
60 facilities, or both: *Provided, however*, That upon written
61 request of the owner or owners of the premises, the
62 board shall shut off and discontinue water and gas
63 services where any rates, rentals, or charges for services
64 or facilities remain unpaid by the user of the premises
65 for a period of sixty days after the same became due and
66 payable.

67 In the event that any publicly or privately owned
68 utility, city, incorporated town, other municipal corpo-
69 ration or other public service district included within
70 the district owns and operates separately either water
71 facilities or sewer facilities, and the district owns and
72 operates the other kind of facilities, either water or
73 sewer, as the case may be, then the district and such
74 publicly or privately owned utility, city, incorporated
75 town or other municipal corporation or other public
76 service district shall covenant and contract with each
77 other to shut off and discontinue the supplying of water
78 service for the nonpayment of sewer service fees and
79 charges: *Provided*, That any contracts entered into by
80 a public service district pursuant to this section shall be
81 submitted to the public service commission for approval.
82 Any public service district providing water and sewer
83 service to its customers shall have the right to terminate
84 water service for delinquency in payment of either
85 water or sewer bills. Where one public service district
86 is providing sewer service and another public service
87 district or a municipality included within the boundar-
88 ies of the sewer district is providing water service, and
89 the district providing sewer service experiences a
90 delinquency in payment, the district or the municipality
91 included within the boundaries of the sewer district that
92 is providing water service, upon the request of the

93 district providing sewer service to the delinquent
94 account, shall terminate its water service to the
95 customer having the delinquent sewer account:
96 *Provided, however,* That any termination of water
97 service must comply with all rules, regulations and
98 orders of the public service commission.

99 Any district furnishing sewer facilities within the
100 district may require, or may by petition to the circuit
101 court of the county in which the property is located,
102 compel or may require the department of health to
103 compel all owners, tenants or occupants of any houses,
104 dwellings and buildings located near any such sewer
105 facilities, where sewage will flow by gravity or be
106 transported by such other methods approved by the
107 department of health including, but not limited to,
108 vacuum and pressure systems, approved under the
109 provisions of section nine, article one, chapter sixteen of
110 this code, from such houses, dwellings or buildings into
111 such sewer facilities, to connect with and use such sewer
112 facilities, and to cease the use of all other means for the
113 collection, treatment and disposal of sewage and waste
114 matters from such houses, dwellings and buildings
115 where there is such gravity flow or transportation by
116 such other methods approved by the department of
117 health including, but not limited to, vacuum and
118 pressure systems, approved under the provisions of
119 section nine, article one, chapter sixteen of this code, and
120 such houses, dwellings and buildings can be adequately
121 served by the sewer facilities of the district, and it is
122 hereby found, determined and declared that the man-
123 datory use of such sewer facilities provided for in this
124 paragraph is necessary and essential for the health and
125 welfare of the inhabitants and residents of such districts
126 and of the state: *Provided,* That if the public service
127 district determines that the property owner must
128 connect with the sewer facilities even when sewage from
129 such dwellings may not flow to the main line by gravity
130 and the property owner must incur costs for any
131 changes in the existing dwellings' exterior plumbing in
132 order to connect to the main sewer line, the public
133 service district board shall authorize the district to pay
134 all reasonable costs for such changes in the exterior

135 plumbing, including, but not limited to, installation,
136 operation, maintenance and purchase of a pump, or any
137 other method approved by the department of health;
138 maintenance and operation costs for such extra instal-
139 lation should be reflected in the users charge for
140 approval of the public service commission. The circuit
141 court shall adjudicate the merits of such petition by
142 summary hearing to be held not later than thirty days
143 after service of petition to the appropriate owners,
144 tenants or occupants.

145 Whenever any district has made available sewer
146 facilities to any owner, tenant or occupant of any house,
147 dwelling or building located near such sewer facility,
148 and the engineer for the district has certified that such
149 sewer facilities are available to and are adequate to
150 serve such owner, tenant or occupant, and sewage will
151 flow by gravity or be transported by such other methods
152 approved by the department of health from such house,
153 dwelling or building into such sewer facilities, the
154 district may charge, and such owner, tenant or occupant
155 shall pay the rates and charges for services established
156 under this article only after thirty-day notice of the
157 availability of the facilities has been received by the
158 owner.

159 All delinquent fees, rates and charges of the district
160 for either water facilities, sewer facilities or gas
161 facilities are liens on the premises served of equal
162 dignity, rank and priority with the lien on such premises
163 of state, county, school and municipal taxes. In addition
164 to the other remedies provided in this section, public
165 service districts are hereby granted a deferral of filing
166 fees or other fees and costs incidental to the bringing
167 and maintenance of an action in magistrate court for the
168 collection of delinquent water, sewer or gas bills. If the
169 district collects the delinquent account, plus reasonable
170 costs, from its customer or other responsible party, the
171 district shall pay to the magistrate the normal filing fee
172 and reasonable costs which were previously deferred. In
173 addition, each public service district may exchange with
174 other public service districts a list of delinquent
175 accounts.

176 Anything in this section to the contrary notwithstanding,
177 ing, any establishment, as defined in section two, article
178 five-a, chapter twenty, now or hereafter operating its
179 own sewage disposal system pursuant to a permit issued
180 by the department of natural resources, as prescribed
181 by section seven, article five-a, chapter twenty of this
182 code, is exempt from the provisions of this section.

§16-13A-13. Revenue bonds.

1 For constructing or acquiring any public service
2 properties for the authorized purposes of the district, or
3 necessary or incidental thereto, and for constructing
4 improvements and extensions thereto, and also for
5 reimbursing or paying the costs and expenses of
6 creating the district, the board of any such district is
7 hereby authorized to borrow money from time to time
8 and in evidence thereof issue the bonds of such district,
9 payable solely from the revenues derived from the
10 operation of the public service properties under control
11 of the district. Such bonds may be issued in one or more
12 series, may bear such date or dates, may mature at such
13 time or times not exceeding forty years from their
14 respective dates, may bear interest at such rate or rates
15 not exceeding eighteen percent per annum payable at
16 such times, may be in such form, may carry such
17 registration privileges, may be executed in such
18 manner, may be payable at such place or places, may
19 be subject to such terms of redemption with or without
20 premium, may be declared or become due before
21 maturity date thereof, may be authenticated in any
22 manner, and upon compliance with such conditions, and
23 may contain such terms and covenants as may be
24 provided by resolution or resolutions of the board.
25 Notwithstanding the form or tenor thereof, and in the
26 absence of any express recital on the face thereof, that
27 the bond is nonnegotiable, all such bonds shall be, and
28 shall be treated as, negotiable instruments for all
29 purposes. Bonds bearing the signatures of officers in
30 office on the date of the signing thereof shall be valid
31 and binding for all purposes notwithstanding that
32 before the delivery thereof any or all of the persons
33 whose signatures appear thereon shall have ceased to be

34 such officers. Notwithstanding the requirements or
35 provisions of any other law, any such bonds may be
36 negotiated or sold in such manner and at such time or
37 times as is found by the board to be most advantageous,
38 and all such bonds may be sold at such price that the
39 interest cost of the proceeds therefrom does not exceed
40 nineteen percent per annum, based on the average
41 maturity of such bonds and computed according to
42 standard tables of bond values. Any resolution or
43 resolutions providing for the issuance of such bonds may
44 contain such covenants and restrictions upon the
45 issuance of additional bonds thereafter as may be
46 deemed necessary or advisable for the assurance of the
47 payment of the bonds thereby authorized.

CHAPTER 175

(Com. Sub. for S. B. 389—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to repeal section five-b, article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article three, chapter seven of said code; to amend and reenact sections one, two, three, four, five, five-a, six, seven, eight, nine, ten, nineteen, twenty-two, twenty-four and twenty-five, article twenty, chapter thirty-one of said code; and to further amend said article twenty by adding thereto two new sections, designated sections one-a and twenty-six, all relating to the West Virginia Regional Jail and Correctional Facility Authority generally; providing that no county commission is required to provide and maintain jails or holding facilities unless it is determined to be necessary; setting forth certain legislative findings and purposes; changing the reference to "prison" throughout article twenty, chapter thirty-one of the code to "correctional facility"; renaming a special fund; providing that the chairman and secretary of the board of the Regional Jail

and Correctional Facility Authority are to be elected by the members of the board every two years; changing the number and composition of the board; specifying quarterly meetings of the board unless a special meeting or meetings are called by the chairman; requiring the board to review and approve the budget of the authority annually; specifying that the executive director of the authority is its chief executive officer; providing for the nomination and appointment of the executive director by the governor with the advice and consent of the Senate, to serve at the will and pleasure of the governor; specifying certain duties of the executive director; providing that the authority may enter into certain types of contracts; specifying that the authority shall provide the Jail and Correctional Facility Standards Commission with secretarial and other necessary services; creating the regional jail and correctional facility development fund; and creating a legislative oversight committee.

Be it enacted by the Legislature of West Virginia:

That section five-b, article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section two, article three, chapter seven of said code be amended and reenacted; that sections one, two, three, four, five, five-a, six, seven, eight, nine, ten, nineteen, twenty-two, twenty-four and twenty-five, article twenty, chapter thirty-one of said code be amended and reenacted; and that said article twenty be further amended by adding thereto two new sections, designated sections one-a and twenty-six, all to read as follows:

Chapter

7. County Commissions and Officers.

31. Corporations.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 3. COUNTY PROPERTY.

§7-3-2. Courthouse, jail and offices.

- 1 The county commission of every county, at the expense
- 2 of the county, shall provide at the county seat thereof

3 a suitable courthouse and jail, together with suitable
4 offices for the judge of the circuit court and judges of
5 courts of limited jurisdiction, clerks of circuit courts,
6 courts of limited jurisdiction and of the county commis-
7 sion, assessor, sheriff, prosecuting attorney, county
8 superintendent of schools, and surveyor, and all other
9 offices as are or may be required by law: *Provided*, That
10 the courthouse, including any annex or other facility
11 housing the courts and offices herein set out (excepting
12 all facilities that are on a twenty-four-hour basis), shall
13 be open to the public Monday through Friday during the
14 hours prescribed by the county commission by an order
15 duly recorded in the order book of the commission. The
16 county commission in such order may, in its discretion,
17 provide that the courthouse, including any annex or
18 other facility housing the courts and offices herein set
19 out, be open on Saturday and prescribe the hours during
20 which it shall be open. In no case may the county
21 commission provide that the courthouse, including any
22 annex or other facility housing the courts and offices
23 herein set out, be open for business on Sundays or
24 national or state holidays: *Provided, however*, That the
25 county commission of every county having a population
26 in excess of two hundred thousand may provide at the
27 county seat or elsewhere in the county, as the county
28 commission shall determine, a suitable jail or jails:
29 *Provided further*, That the county commission of any
30 county, regardless of population, may, as provided in
31 article twenty-three, chapter eight of the code of West
32 Virginia, contract with the county commissions of one
33 or more other counties within this state for the erection,
34 construction, equipment, leasing and renting of a
35 regional correctional center for either adult or youth
36 offenders, at a location mutually agreeable to the
37 contracting parties and not necessarily at the county
38 seat, which will serve each county entering into the
39 contract. The county commission shall keep the court-
40 house, jail and other offices in constant and adequate
41 repair, and supplied with the necessary heat, light,
42 furniture, record books, and janitor service, and, except
43 as to the office for the judge of the circuit court, with
44 the necessary stationery and postage, and other things

45 as shall be necessary; but all of the public records, books
46 and papers belonging or appertaining to the county
47 surveyor's office shall be delivered to the clerk of the
48 county commission and retained by him in his official
49 possession and under his control and shall constitute a
50 part of the public records, books and papers of his office.
51 All courthouses, jails and offices hereafter erected shall
52 be built of stone and brick, or stone or brick, or other
53 equally fireproof materials, and the offices shall be
54 fireproof or be furnished with fireproof vaults or safes.
55 The jails shall be well secured, and sufficient for the
56 convenient accommodation of those who may be confined
57 therein. The county commission may also provide other
58 necessary offices and buildings, and may, by purchase
59 or otherwise, acquire as much land as may be requisite
60 or desirable for county purposes, and may suitably
61 enclose, improve and embellish the lands so acquired.

62 Subject to the conditions hereinabove set forth with
63 respect to the site of the courthouse, jail, and other
64 offices, the commission may, from time to time, as may
65 seem to it proper, provide, at the expense of the county,
66 a new or other building or buildings to be used for the
67 courthouse and jail, or for either, together with suitable
68 offices, as aforesaid, and for that purpose may acquire,
69 by purchase or otherwise, and hold any lands, or lands
70 and buildings, which may be necessary, and may
71 enclose, improve and embellish the same. When any new
72 or other building or buildings shall be ready for
73 occupancy, the county commission shall make an order
74 declaring that, on a day to be therein named, the new
75 or other building or buildings shall become the court-
76 house, or jail, or both the courthouse and jail of the
77 county, and shall cause copies of the order to be posted
78 at the front door of the new as well as of the old
79 courthouse, at least twenty days before the day named
80 in the order; and on and after the day named the new
81 or other building or buildings shall become, respec-
82 tively, the courthouse, or jail, or both the courthouse and
83 jail of the county in all respects and for all purposes.
84 After the change shall have been made the county
85 commission may sell or otherwise dispose of, as may
86 seem to it proper, the building or buildings previously

87 used as a courthouse and jail, or either, and the land on
88 which they are, or either is, situated, and of the interest
89 of the county therein.

90 Notwithstanding any other provision of this code to
91 the contrary, any county commission providing and
92 maintaining a jail on the effective date of this article
93 shall not be required to provide and maintain a jail after
94 a regional jail becomes available pursuant to the
95 provisions of article twenty, chapter thirty-one of this
96 code, unless the county commission determines that such
97 a facility is necessary: *Provided*, That such county
98 commission may provide and maintain a holding facility
99 which complies with the standards set forth for such
100 holding facilities in legislative rules promulgated by the
101 jail and correctional facility standards commission or its
102 predecessor, the jail and prison standards commission.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

- §31-20-1. Short title.
- §31-20-1a. Legislative findings and purposes.
- §31-20-2. Definitions.
- §31-20-3. West Virginia regional jail and correctional facility authority; composition; appointment; terms; compensation and expenses.
- §31-20-4. Governing body; organization and meetings; quorum; administrative expenses.
- §31-20-5. Powers and duties of the authority; bidding procedures.
- §31-20-5a. Bidding procedures.
- §31-20-6. Regional jail commissions; composition; appointment; terms; compensation and expenses.
- §31-20-7. General powers of the commission.
- §31-20-8. Jail and correctional facility standards commission; appointment; compensation; vacancies; quorum.
- §31-20-9. Purpose, powers and duties.
- §31-20-10. Regional jail and correctional facility development fund.
- §31-20-19. Tax exemption.
- §31-20-22. Money of the authority.
- §31-20-24. Agreement with federal agencies not to alter or limit powers of authority.
- §31-20-25. Further duties of the authority.
- §31-20-26. Legislative oversight committee.

§31-20-1. Short title.

1 This article shall be known and may be cited as "The

2 West Virginia Regional Jail and Correctional Facility
3 Authority Act.”

§31-20-1a. Legislative findings and purposes.

1 (a) The Legislature finds as follows:

2 (1) That existing jails and correctional facilities in
3 this state serve neither the best interests of the inmate
4 population of such jails and facilities nor the citizens of
5 West Virginia;

6 (2) That due to time constraints established and
7 imposed by judicial decisions, it is imperative that the
8 Legislature give immediate and diligent attention to the
9 improvement of existing facilities and the construction
10 and maintenance of new facilities, as well as to the
11 development and implementation of new, innovative and
12 effective programs dealing with incarcerated persons;

13 (3) That the physical condition of most existing jails
14 and correctional facilities contribute to a frustration of
15 efforts to provide rehabilitation, education, vocational
16 training, and social and psychological adjustment and
17 improvement for incarcerated persons, to the end that
18 such existing facilities are utilized largely for the
19 limited purposes of confinement;

20 (4) That there is a need to examine, understand and
21 implement various new and innovative trends which are
22 being advanced in the area of correctional institution
23 design, and to explore the developing alternatives to
24 incarceration which are being experimented with in
25 other jurisdictions; and

26 (5) That the revenues of this state, insofar as they are
27 currently used to maintain a traditional penal system,
28 are not efficiently utilized to provide facilities or
29 produce programs which could direct an inmate's time
30 and effort to prepare him for life outside of confinement;
31 nor do such revenues provide corrections officials with
32 the resources necessary to address the issues and
33 problems with which they are confronted.

34 (b) The purposes of this article are as follows:

35 (1) To provide a cost-efficient system within this state

36 for the construction, maintenance and operation of jails
37 and correctional facilities;

38 (2) To develop and implement plans for the renovation
39 and improvement of existing facilities and the design
40 and construction of new facilities to better serve the
41 inmate population and the citizens of this state;

42 (3) To provide an environment in which new and
43 innovative corrections programs may be considered and
44 undertaken, and in which opportunities may be offered
45 to inmates to overcome personal deficiencies which are
46 educational, vocational, social or psychological in nature;

47 (4) To investigate the feasibility of individualizing
48 and classifying inmates according to their psychological
49 and physical conditions at the time they are incarcerated,
50 and the feasibility of designing for each such
51 inmate a plan for self-improvement and rehabilitation.

§31-20-2. Definitions.

1 Unless the context indicates clearly otherwise, as used
2 in this article:

3 (a) "Authority" or "West Virginia Regional Jail
4 Authority" means the West Virginia regional jail and
5 correctional facility authority created by this article.

6 (b) "Board" means the governing body of the
7 authority.

8 (c) "Bonds" means bonds of the authority issued under
9 this article.

10 (d) "Cost of construction or renovation of a local jail
11 facility or regional jail facility" means the cost of all
12 lands, water areas, property rights and easements,
13 financing charges, interest prior to and during construction
14 and for a period not exceeding six months following
15 the completion of construction, equipment, engineering
16 and legal services, plans, specifications and surveys,
17 estimates of costs and other expenses necessary or
18 incidental to determining the feasibility or practicability
19 of any such project, together with such other
20 expenses as may be necessary or incidental to the
21 financing and the construction or renovation of such
22 facilities and the placing of same in operation.

- 23 (e) "County" means any county of this state.
- 24 (f) "Federal agency" means the United States of
25 America and any department, corporation, agency or
26 instrumentality created, designated or established by
27 the United States of America.
- 28 (g) "Fund" means the regional jail and correctional
29 facility development fund provided in section ten of this
30 article.
- 31 (h) "Government" means state and federal govern-
32 ment, and any political subdivision, agency or instru-
33 mentality thereof, corporate or otherwise.
- 34 (i) "Inmate" means any person properly committed to
35 a local or regional jail facility or a correctional facility.
- 36 (j) "Local jail facility" means any county facility for
37 the confinement, custody, supervision or control of
38 persons convicted of misdemeanors, awaiting trial or
39 awaiting transportation to a state correctional facility.
- 40 (k) "Municipality" means any city, town or village in
41 this state.
- 42 (l) "Notes" means any notes as defined in section one
43 hundred four, article three, chapter forty-six of this code
44 issued under this article by the authority.
- 45 (m) "Correctional facility" means any correctional
46 facility, penitentiary, detention center or other correc-
47 tional institution operated by the department of
48 corrections.
- 49 (n) "Regional jail facility" or "regional jail" means any
50 facility operated by the authority and used jointly by
51 two or more counties for the confinement, custody,
52 supervision or control of persons convicted of misdemea-
53 nors or awaiting trial or awaiting transportation to a
54 state correctional facility.
- 55 (o) "Regional jail commission" means the commission
56 established in section eight of this article.
- 57 (p) "Revenues" means all fees, charges, moneys,
58 profits, payments of principal of, or interest on, loans

59 and other investments, grants, contributions and all
60 other income received by the authority.

61 (q) "Security interest" means an interest in the loan
62 portfolio of the authority which interest is secured by
63 an underlying loan or loans and is evidenced by a note
64 issued by the authority.

65 (r) "Work farm" shall have the same meaning as that
66 term is used in section twelve, article eight, chapter
67 seven of this code authorizing work farms for individual
68 counties.

**§31-20-3. West Virginia regional jail and correctional
facility authority; composition; appointment;
terms; compensation and expenses.**

1 There is hereby created the West Virginia regional
2 jail and correctional facility authority which shall be a
3 body corporate and a government instrumentality. The
4 authority shall have and is hereby granted all of the
5 powers and authority and shall perform all of the
6 functions and services heretofore vested in and per-
7 formed by the West Virginia regional jail and prison
8 authority. The West Virginia regional jail and prison
9 authority is hereby abolished. The terms of members
10 currently serving on the board of the West Virginia
11 regional jail and prison authority shall expire on the
12 thirtieth day of June, one thousand nine hundred eighty-
13 nine. Wherever in this chapter and elsewhere in law
14 reference is made to the West Virginia regional jail and
15 prison authority, such reference shall henceforth be
16 construed and understood to mean the West Virginia
17 regional jail and correctional facility authority.

18 The authority shall be governed by a board of seven
19 members, consisting of the commissioner of the depart-
20 ment of corrections; the commissioner of the department
21 of finance and administration or his designated repre-
22 sentative; three county officials appointed by the
23 governor, no more than two of which may be of the same
24 political party; and two citizens appointed by the
25 governor to represent the areas of law and medicine.
26 Members of the Legislature are not eligible to serve on
27 the board.

28 The governor shall nominate and, by and with the
29 advice and consent of the Senate, appoint five members
30 of the authority for staggered terms of four years
31 beginning the first day of July, one thousand nine
32 hundred eighty-nine. Of the members of the board first
33 appointed, one shall be appointed for a term ending the
34 thirtieth day of June, one thousand nine hundred ninety-
35 one, two shall be appointed for terms ending the
36 thirtieth day of June, one thousand nine hundred ninety-
37 two, and two shall be appointed for terms ending the
38 thirtieth day of June, one thousand nine hundred ninety-
39 three. As these original appointments expire, each
40 subsequent appointment shall be for a full four-year
41 term.

42 Any appointed member whose term has expired shall
43 serve until his successor has been duly appointed and
44 qualified. Any person appointed to fill a vacancy shall
45 serve only for the unexpired term. Any appointed
46 member is eligible for reappointment. Members of the
47 authority are not entitled to compensation for services
48 performed as members but are entitled to reimburse-
49 ment for all reasonable and necessary expenses actually
50 incurred in the performance of their duties.

51 All members of the board of the authority shall
52 execute an official bond in a penalty of ten thousand
53 dollars, conditioned as required by law. Premiums on
54 such bond shall be paid from funds accruing to the
55 authority. Such bond shall be approved as to form by
56 the attorney general and as to sufficiency by the
57 governor and, when fully executed and approved, shall
58 be filed in the office of the secretary of state.

**§31-20-4. Governing body; organization and meetings;
quorum; administrative expenses.**

1 The governing body of the authority shall consist of
2 the members of the board as provided for in section
3 three of this article and shall exercise all the powers
4 given to the authority in this article. On the second
5 Monday of July of each odd-numbered year, the board
6 shall meet to elect a chairman and a secretary from
7 among its own members. The commissioner of finance

8 and administration or his designated representative
9 shall serve as treasurer of the board. The board shall
10 otherwise meet quarterly, unless a special meeting is
11 called by its chairman.

12 A majority of the members of the board constitute a
13 quorum, and a quorum must be present for the board
14 to conduct business. Unless the bylaws require a larger
15 number, action may be taken by majority vote of the
16 members present.

17 The board shall prescribe, amend and repeal bylaws
18 and rules governing the manner in which the business
19 of the authority is conducted and shall review and
20 approve the budget prepared by the executive director
21 annually.

22 The governor shall, with the advice and consent of the
23 Senate, appoint an executive director to act as its chief
24 executive officer, to serve at the will and pleasure of the
25 governor. The executive director is empowered to
26 employ any other personnel he determines necessary
27 and may appoint counsel and legal staff for the
28 authority and retain such temporary engineering,
29 financial and other consultants or technicians as may be
30 required for any special study or survey consistent with
31 the provisions of this article. The executive director is
32 further empowered to engage in negotiations and carry
33 out plans to implement the provisions of this article and
34 to exercise those powers listed in section five of this
35 article on behalf of the authority. The executive director
36 shall prepare annually a budget to be submitted to the
37 board for its review and approval.

38 All costs incidental to the administration of the
39 authority including office expense, personal services
40 expense and current expense, shall be paid from the
41 regional jail and correctional facility development fund
42 in accordance with guidelines issued by the board of the
43 authority.

**§31-20-5. Powers and duties of the authority; bidding
procedures.**

1 The regional jail and correctional facility authority

2 shall complete a comprehensive study of all correctional
3 facilities and jail facilities in the state of West Virginia
4 no later than the first day of July, one thousand nine
5 hundred eighty-six. This study shall include an assess-
6 ment of the physical conditions of confinement within
7 the institutions and the relative need for the institutions
8 when considering other available institutions of confine-
9 ment located within the state.

10 After completing this study, the authority shall
11 submit a plan to the governor on the establishment of
12 regional jails in this state and the acquisition, construc-
13 tion or renovation of facilities for correctional facilities.
14 The authority shall specify groups of counties within the
15 state to be formed into regions for the establishment of
16 such regional jails. Within each region a local jail
17 commission shall be established and have the powers
18 and duties as set forth in section six of this article.

19 The authority shall consider, but not be limited to, the
20 following when creating the plan establishing regions:

21 (1) The relative physical condition of the correctional
22 facilities and jail facilities located within the state;

23 (2) The transportation costs associated with the
24 establishment of centralized jail services including, but
25 not limited to, the costs of transporting persons incar-
26 cerated in regional jails to court appearances, to
27 interviews with their attorneys, and to have visitation
28 with their families and friends, all in any county seat
29 of a county served by the regional facility: *Provided,*
30 That consideration of such costs in the creation of the
31 plan shall not be construed to require the transportation
32 of inmates to interviews with their attorneys or to have
33 visitation with their families and friends when visitation
34 facilities and schedules are established in regional jails;

35 (3) The availability of medical services and educa-
36 tional and recreational opportunities;

37 (4) Information received from public hearings;

38 (5) The relative efficiency in the cost of jail services
39 caused by establishment of regional jail facilities;

40 (6) Available facilities which may be used as regional

41 jails or correctional facilities including, but not limited
42 to, existing county and state owned properties: *Provided,*
43 That if the authority determines that an existing facility
44 meets the standards or could reasonably be made to
45 meet the standards for a regional jail or other correc-
46 tional facility, the authority may proceed to acquire such
47 existing facility and compensate the owner thereof in an
48 amount not less than any local share expended by the
49 owner as matching moneys for the receipt of federal
50 funds: *Provided, however,* That if the authority deter-
51 mines that an existing facility does not meet the
52 standards or could not reasonably be made to meet the
53 standards for a regional jail or other correctional
54 facility, the authority shall provide the owner with a
55 written statement setting forth the reasons supporting
56 such determination;

57 (7) The cost of acquiring, constructing, renovating,
58 operating and maintaining local jail facilities for use as
59 local holding facilities in each county and regional jail
60 facilities for each county and the financing provided by
61 this article;

62 (8) The leasing of any available portion of any
63 regional jail space and the leasing of available facilities
64 of any regional jail to the West Virginia department of
65 corrections for the keeping and detaining of prisoners
66 sentenced to serve terms of incarceration under the
67 custody of the West Virginia department of corrections
68 for nonviolent crimes and to contract with the depart-
69 ment of corrections for the providing of food, clothing,
70 shelter and any and all incidental costs in the care,
71 control and maintenance of such prisoners: *Provided,*
72 That such leasing does not restrict space or facilities
73 needed for the detention of county prisoners;

74 (9) The advisability and cost effectiveness of acquir-
75 ing, constructing, renovating, operating and maintain-
76 ing work farms serving one or more counties or regions;
77 and

78 (10) The proximity of possible sites for the regional
79 jail facilities to residential areas, schools, churches and
80 other public buildings and facilities.

81 Public hearings pursuant to this section shall be held
82 by the authority in convenient locations throughout the
83 state. No less than ten public hearings shall be held for
84 public comment on the establishment of regional jails.
85 The authority shall cause to be published at least two
86 weeks in advance of a hearing a Class II-0 legal
87 advertisement, as provided in section two, article three,
88 chapter fifty-nine of this code, setting forth the reason
89 for the hearing and the time, place and date thereof. The
90 publication area shall be each county which may be
91 included in a region for the purposes of a regional jail
92 with the county in which the public hearing is held.

93 In addition to the hearing requirements above, before
94 beginning construction of a new facility for use as a
95 regional jail or correctional facility or before beginning
96 renovation or acquisition of an existing facility for use
97 as a regional jail facility, which existing facility is not
98 already a jail, correctional facility or secure facility for
99 the detention of juveniles or persons otherwise involun-
100 tarily committed or confined, the authority shall hold a
101 hearing for comment by all members of the public on
102 all aspects relating to the advisability of the use of the
103 site for that regional jail facility. The authority shall
104 promulgate legislative rules pursuant to chapter twenty-
105 nine-a of this code for the requirements for notice and
106 other procedures of said public hearings, which require-
107 ments shall be as similar as practicable to those
108 hearings conducted regarding the construction of
109 bridges by the West Virginia department of highways.

110 The authority, as a public corporation and governmen-
111 tal instrumentality exercising public powers of the state,
112 may exercise all powers necessary or appropriate to
113 carry out the purposes of this article, including, but not
114 limited to, the power:

115 (a) To acquire, own, hold and dispose of property, real
116 and personal, tangible and intangible.

117 (b) To lease property, whether as lessee or lessor.

118 (c) To mortgage or otherwise grant security interests
119 in its property.

120 (d) To conduct examinations and investigations and to
121 hear testimony and take proof, under oath or affirma-
122 tion at public or private hearings, on any matter
123 relevant to this article and necessary for information on
124 the construction or renovation of any correctional
125 facility or the establishment of any correctional facility
126 industries project.

127 (e) To issue subpoenas requiring the attendance of
128 witnesses and the production of books and papers
129 relevant to any hearing before such authority or one or
130 more members appointed by it to conduct any hearing.

131 (f) To apply to the circuit court having venue of such
132 offense to have punished for contempt any witness who
133 refuses to obey a subpoena, refuses to be sworn or
134 affirmed, or refuses to testify, or who commits any
135 contempt after being summoned to appear.

136 (g) To sue and be sued, implead and be impleaded,
137 and complain and defend in any court.

138 (h) To adopt, use and alter at will a corporate seal.

139 (i) To make bylaws for the management and regula-
140 tion of its affairs pursuant to article three, chapter
141 twenty-nine-a of this code.

142 (j) To appoint officers, agents and employees.

143 (k) To make contracts of every kind and nature and
144 to execute all instruments necessary or convenient for
145 carrying on its business, including contracts with any
146 other governmental agency of this state or of the federal
147 government or with any person, individual, partnership
148 or corporation to effect any or all of the purposes of this
149 article.

150 (l) Without in any way limiting any other subdivision
151 of this section, to accept grants from and enter into
152 contracts and other transactions with any federal
153 agency.

154 (m) To borrow money and to issue its negotiable
155 bonds, security interests or notes and to provide for and

156 secure the payment thereof, and to provide for the rights
157 of the holders thereof, and to purchase, hold and dispose
158 of any of its bonds, security interests or notes: *Provided*,
159 That no bond or other obligation may be issued or
160 incurred unless and until the Legislature by concurrent
161 resolution has approved the purpose and amount of each
162 project for which proceeds from the issuance of such
163 bond or other obligation will be used.

164 (n) To sell, at public or private sale, any bond or other
165 negotiable instrument, security interest or obligation of
166 the authority in such manner and upon such terms as
167 the authority considers would best serve the purposes of
168 this article.

169 (o) To issue its bonds, security interests and notes
170 payable solely from the revenues or other funds
171 available to the authority therefor; and the authority
172 may issue its bonds, security interests or notes in such
173 principal amounts as it considers necessary to provide
174 funds for any purposes under this article, including:

175 (1) The payment, funding or refunding of the princi-
176 pal of, interest on or redemption premiums on, any
177 bonds, security interests or notes issued by it whether
178 the bonds, security interests, notes or interest to be
179 funded or refunded have or have not become due.

180 (2) The establishment or increase of reserves to secure
181 or to pay bonds, security interests, notes or the interest
182 thereon and all other costs or expenses of the authority
183 incident to and necessary or convenient to carry out its
184 corporate purposes and powers. Any bonds, security
185 interests or notes may be additionally secured by a
186 pledge of any revenues, funds, assets or moneys of the
187 authority from any source whatsoever.

188 (p) To issue renewal notes or security interests, to
189 issue bonds to pay notes or security interests and,
190 whenever it considers refunding expedient, to refund
191 any bonds by the issuance of new bonds, whether the
192 bonds to be refunded have or have not matured except
193 that no such renewal notes shall be issued to mature
194 more than ten years from date of issuance of the notes
195 renewed and no such refunding bonds may be issued to

196 mature more than twenty-five years from the date of
197 issuance.

198 (q) To apply the proceeds from the sale of renewal
199 notes, security interests or refunding bonds to the
200 purchase, redemption or payment of the notes, security
201 interests or bonds to be refunded.

202 (r) To accept gifts or grants of property, funds,
203 security interests, money, materials, labor, supplies or
204 services from the United States of America or from any
205 governmental unit or any person, firm or corporation,
206 and to carry out the terms or provisions of, or make
207 agreements with respect to, or pledge, any gifts or
208 grants, and to do any and all things necessary, useful,
209 desirable or convenient in connection with the procur-
210 ing, acceptance or disposition of gifts or grants.

211 (s) To the extent permitted under its contracts with
212 the holders of bonds, security interests or notes of the
213 authority, to consent to any modification of the rate of
214 interest, time of payment of any installment of principal
215 or interest, security or any other term of any bond,
216 security interest, note or contract or agreement of any
217 kind to which the authority is a party.

218 (t) To sell security interests in the loan portfolio of the
219 authority. Such security interests shall be evidenced by
220 instruments issued by the authority. Proceeds from the
221 sale of security interests may be issued in the same
222 manner and for the same purposes as bond and note
223 revenues.

224 (u) To promulgate rules and regulations, in accor-
225 dance with the provisions of chapter twenty-nine-a of
226 this code, to implement and make effective the powers,
227 duties and responsibilities invested in the authority by
228 the provisions of this article and otherwise by law.

229 (v) To assume the responsibility for operation and
230 management of regional jail facilities under the juris-
231 diction of the state regional jail and correctional facility
232 authority. The authority shall provide for the transpor-
233 tation of inmates between the regional jails and local
234 holding facilities for court appearances.

235 (w) To exercise all power and authority provided in
236 this article necessary and convenient to plan, finance,
237 construct, renovate, maintain and operate or oversee the
238 operation of regional jails and correctional facilities.

239 Notwithstanding any other provision of this section,
240 the regional jail and correctional facility authority shall
241 no later than the first day of November, one thousand
242 nine hundred eighty-nine, submit a plan to the joint
243 committee on government and finance of the Legislature
244 detailing the means by which the authority will comply
245 with the mandates of the supreme court of appeals as
246 to the structural and internal conditions and programs
247 of the correctional facilities in this state. In preparing
248 such plan, the authority is to allow for and consider any
249 input from the public.

§31-20-5a. Bidding procedures.

1 When the cost under any contract or agreement
2 entered into by the authority other than compensation
3 for personal services involves an expenditure of more
4 than two thousand dollars, the authority shall make a
5 written contract with the lowest responsible bidder after
6 public notice published as a Class II legal advertisement
7 in compliance with the provisions of article three,
8 chapter fifty-nine of this code, the publication area for
9 such publication to be the county or counties wherein the
10 work is to be performed or which is affected by the
11 contract, which notice shall state the general character
12 of the work and general character of the materials to
13 be furnished, the place where plans and specifications
14 therefor may be examined and the time and place of
15 receiving bids, but a contract for lease of a correctional
16 facility or regional or county jail project constructed and
17 owned by the authority is not subject to the foregoing
18 requirements and the authority may enter into such
19 contract for lease pursuant to negotiation upon such
20 terms and conditions and for such period as it finds to
21 be reasonable and proper under the circumstances and
22 in the best interests of proper operation or efficient
23 acquisition or construction of such projects. The
24 authority may reject any and all bids. A bond with good
25 and sufficient surety, approved by the authority, shall

26 be required of all contractors in an amount equal to at
27 least fifty percent of the contract price, conditioned upon
28 faithful performance of the contract.

**§31-20-6. Regional jail commissions; composition;
appointment; terms; compensation and
expenses.**

1 Upon the formation of specific regions by the regional
2 jail and correctional facility authority for the establish-
3 ment of regional jails as provided in section five of this
4 article, there shall be created in each region a regional
5 jail commission composed of the following members:
6 The sheriff from each county in the region or his
7 designated representative; a member of the county
8 commission from each county in the region chosen by
9 the commission or a designated representative; one
10 mayor from each county in the region to be appointed
11 by the regional jail and correctional facility authority
12 from a list of names submitted by the West Virginia
13 municipal league, or his designated representative; and
14 three persons from the region who are representative of
15 the areas of law, medicine and education to be appointed
16 by the regional jail and correctional facility authority
17 and who shall serve for a term of three years: *Provided,*
18 That any local regional jail authority or commission
19 established prior to the effective date of this article shall
20 be recognized as meeting the requirements of this
21 section, at the option of the local regional jail authority
22 or commission.

23 Any appointed member whose term has expired shall
24 serve until his successor has been duly appointed and
25 qualified. Any person appointed to fill a vacancy shall
26 serve only for the unexpired term. Any appointed
27 member is eligible for reappointment. Members of the
28 commission are not entitled to compensation for services
29 performed as members but are entitled to reimburse-
30 ment for all reasonable and necessary expenses actually
31 incurred in the performance of their duties. The county
32 commission from each county in the region shall provide
33 the commission with secretarial and other necessary
34 services.

§31-20-7. General powers of the commission.

1 Each regional jail commission shall prepare and
2 submit such plans, suggestions and recommendations to
3 the regional jail and correctional facility authority
4 which will define the needs for its region as to the
5 construction, renovation and general operation of a
6 regional jail facility. The report may include, but is not
7 limited to, recommendations for conforming its jail
8 facility to the jail standards promulgated by the jail and
9 correctional facility standards commission, upgrading
10 the recreational and educational opportunities for
11 inmates confined in the region's facility, development of
12 programs in cooperation with community medical and
13 mental health centers in the region to provide adequate
14 medical and drug and alcohol addiction services within
15 the facility and information concerning the costs
16 incurred in the operation of the facility.

§31-20-8. Jail and correctional facility standards commission; appointment; compensation; vacancies; quorum.

1 A jail and correctional facility standards commission
2 of eleven members is hereby created. The governor shall
3 appoint two county sheriffs, to be chosen from a list of
4 three names provided by the president of the West
5 Virginia sheriff's association, and three county commis-
6 sioners, to be chosen from a list of five names provided
7 by the president of the West Virginia county commis-
8 sioner's association. The chief justice of the state
9 supreme court of appeals shall appoint a representative
10 from the juvenile facilities review panel. Each of the
11 members so appointed shall serve for a term of three
12 years and be eligible for reappointment. The commis-
13 sioner of the department of corrections, the director of
14 the department of health, the state fire marshal, the
15 commissioner of the department of human services and
16 the director of the division of vocational education of the
17 state department of education or their designees shall
18 be members ex officio in an advisory capacity.

19 Members of the commission shall serve without
20 compensation, but may be reimbursed for reasonable

21 and necessary expenses incurred in the performance of
22 their duties. The regional jail and correctional facility
23 authority shall provide the commission with secretarial
24 and other necessary services.

25 A vacancy among the appointed members of the
26 commission shall be filled, within thirty days, in the
27 same manner as the original appointment. A quorum
28 consists of four of the six voting members. Members of
29 the commission shall select a chairman.

§31-20-9. Purpose, powers and duties.

1 The purpose of the commission is to assure that proper
2 minimum standards and procedures are developed for
3 jail, work farm and correctional facility operation,
4 maintenance and management of inmates for correc-
5 tional facilities, regional jails and local jail facilities
6 used as temporary holding facilities. In order to
7 accomplish this purpose, the commission shall:

8 (1) Prescribe standards for the maintenance and
9 operation of correctional facilities, county and regional
10 jails. Such standards shall include, but not be limited
11 to, requirements assuring adequate space, lighting and
12 ventilation; fire protection equipment and procedures;
13 provision of specific personal hygiene articles; bedding,
14 furnishings and clothing; food services; appropriate
15 staffing and training; sanitation, safety and hygiene;
16 isolation and suicide prevention; appropriate medical,
17 dental and other health services; indoor and outdoor
18 exercise; appropriate vocational and educational oppor-
19 tunities; classification; inmate rules and discipline;
20 inmate money and property; religious services; inmate
21 work programs; library services; visitation, mail and
22 telephone privileges; and other standards necessary to
23 assure proper operation.

24 (2) Promulgate such rules pursuant to the provisions
25 of chapter twenty-nine-a of this code as are necessary
26 to implement the provisions of this article, including,
27 without limitation, minimum jail, work farm and
28 correctional facility standards which shall be promul-
29 gated on or before the first day of July, one thousand
30 nine hundred eighty-six.

31 (3) Develop a process for reviewing and updating the
32 jail, work farm and correctional facility standards
33 pursuant to the provisions of chapter twenty-nine-a of
34 this code as may be necessary to assure that they
35 conform to current law.

36 (4) Report periodically to the authority to advise and
37 recommend actions to be taken by the authority to
38 implement proper minimum jail, work farm and
39 correctional facility standards.

40 Notwithstanding any other provision of this code to
41 the contrary, any county commission providing and
42 maintaining a jail on the effective date of this article
43 shall not be required to provide and maintain a jail after
44 a regional jail becomes available pursuant to the
45 provisions of article twenty, chapter thirty-one of this
46 code, unless the county commission determines that such
47 a facility is necessary: *Provided*, That such county
48 commission may provide and maintain a holding facility
49 which complies with the standards set forth for such
50 holding facilities in legislative rules promulgated by the
51 jail and correctional facility standards commission or its
52 predecessor, the jail and prison standards commission.

**§31-20-10. Regional jail and correctional facility develop-
ment fund.**

1 (a) The regional jail and correctional facility develop-
2 ment fund is hereby created and shall be a special
3 account in the state treasury. The fund shall operate as
4 a revolving fund whereby all appropriations and
5 payments thereto may be applied and reapplied by the
6 authority for the purposes of this article. Separate
7 accounts may be established within the special account
8 for the purpose of identification of various revenue
9 resources and payment of specific obligations.

10 (b) Revenues deposited into the fund may be used to
11 make payments of interest and may be pledged as
12 security for bonds, security interests or notes issued by
13 the authority pursuant to this article.

14 (c) Whenever the authority determines that the
15 balance in the fund is in excess of the immediate

16 requirements of this article, it may request that such
17 excess be invested until needed. In such case such excess
18 shall be invested in a manner consistent with the
19 investment of the temporary state funds. Interest earned
20 on any money invested pursuant to this section shall be
21 credited to the fund.

22 (d) If the authority determines that funds held in the
23 fund are in excess of the amount needed to carry out
24 the purposes of this article, it shall take such action as
25 is necessary to release such excess and transfer it to the
26 general fund of the state treasury.

27 (e) The fund shall consist of the following:

28 (1) Amounts raised by the authority by the sale of
29 bonds or other borrowing authorized by this article;

30 (2) Moneys collected and deposited in the state
31 treasury which are specifically designated by acts of the
32 Legislature for inclusion into the fund;

33 (3) Contributions, grants and gifts from any source,
34 both public and private, which may be used by the
35 authority for any project or projects;

36 (4) All sums paid by the counties pursuant to subsec-
37 tion (h) of this section; and

38 (5) All interest earned on investments made by the
39 state from moneys deposited in this fund.

40 (f) The amounts deposited in the fund shall be
41 accounted for and expended in the following manner:

42 (1) Amounts raised by the sale of bonds or other
43 borrowing authorized by this article shall be deposited
44 in a separate account within the fund and expended for
45 the purpose of construction and renovation of correc-
46 tional facilities and regional jails for which need has
47 been determined by the authority;

48 (2) Amounts deposited from all other sources shall be
49 pledged first to the debt service on any bonded indebted-
50 ness or other obligation incurred by borrowing of the
51 authority;

52 (3) After any requirements of debt service have been

53 satisfied, the authority shall requisition from the fund
54 such amounts as are necessary to provide for payment
55 of the administrative expenses of this article;

56 (4) The authority shall requisition from the fund after
57 any requirements of debt service have been satisfied
58 such amounts as are necessary for the maintenance and
59 operation of the correctional facilities or regional jails
60 or both that are constructed pursuant to the plan
61 required by this article and shall expend such amounts
62 for such purpose. The fund shall make an accounting of
63 all amounts received from each county by virtue of any
64 filing fees, court costs or fines required by law to be
65 deposited in the fund and amounts from the jail
66 improvement funds of the various counties. After the
67 expenses of administration have been deducted the
68 amounts expended in the respective regions from such
69 sources shall be in proportion to the percentage the
70 amount contributed to the fund by the counties in each
71 region bears to the total amount received by the fund
72 from such sources;

73 (5) Notwithstanding any other provisions of this
74 article, sums paid into the fund by each county pursuant
75 to subsection (h) of this section for each inmate shall be
76 placed in a separate account and shall be requisitioned
77 from the fund to pay for the costs specified in that
78 subsection incurred at the regional jail facility at which
79 each such inmate was incarcerated; and

80 (6) Any amounts deposited in the fund from other
81 sources permitted by this article shall be expended in
82 the respective regions based on particular needs to be
83 determined by the authority.

84 (g) After a regional jail facility becomes available
85 pursuant to this article for the incarceration of inmates,
86 each county within the region shall incarcerate all
87 persons whom the county would have incarcerated in
88 any jail prior to the availability of the regional jail
89 facility in the regional jail facility except those whose
90 incarceration in a local jail facility used as a local
91 holding facility is specified as appropriate under the
92 standards and procedures developed pursuant to section

93 nine of this article and who the sheriff or the circuit
94 court elects to incarcerate therein.

95 (h) When inmates are placed in a regional jail facility
96 pursuant to subsection (g) of this section the county
97 shall pay into the regional jail and correctional facility
98 development fund a cost per day for each inmate so
99 incarcerated to be determined by the regional jail and
100 correctional facility authority according to criteria and
101 by procedures established by regulations pursuant to
102 article three, chapter twenty-nine-a of this code to cover
103 the costs of operating such regional jail facility to
104 maintain each such inmate which costs shall not include
105 the cost of construction, acquisition or renovation of said
106 regional jail facility.

§31-20-19. Tax exemption.

1 The exercise of the powers granted to the authority
2 by this article will be in all respects for the benefit of
3 the people of the state for the improvement of their
4 safety, convenience and welfare. Since the operation and
5 maintenance of correctional facilities and correctional
6 facility industries projects will constitute the perfor-
7 mance of essential governmental functions, the authority
8 is not required to pay any taxes or assessments upon any
9 such facilities or projects or upon any property acquired
10 or used by the authority or upon the income therefrom.
11 Such bonds, security interests and notes and all interest
12 and income thereon are exempt from all taxation by this
13 state, or any county, municipality, political subdivision
14 or agency thereof, except inheritance taxes.

§31-20-22. Money of the authority.

1 All money accruing to the authority from whatever
2 source derived, except legislative appropriations, and
3 except that authorized to be deposited directly into the
4 regional jail and correctional facility development fund
5 shall be collected and received by the treasurer of the
6 authority, who shall pay it into the state treasury in the
7 manner required by section two, article two, chapter
8 twelve of this code, to be credited to the fund.

§31-20-24. Agreement with federal agencies not to alter or limit powers of authority

1 The state hereby pledges to and agrees with each
2 federal agency that, if such agency constructs or loans
3 or contributes any funds for the acquisition, construc-
4 tion, extension, improvement or enlargement of any
5 correctional facility or correctional facility industries
6 project, the state will not alter or limit the rights and
7 powers of the authority in any manner which would be
8 inconsistent with the due performance of any agreement
9 between the authority and such federal agency and that
10 the authority shall continue to have and exercise all
11 powers granted for carrying out the purposes of this
12 article for so long as necessary.

§31-20-25. Further duties of the authority.

1 The Legislature hereby finds that the regional jail and
2 correctional facility authority has not complied with the
3 provisions of this article in certain areas and by this
4 section imposes further duties upon the authority in
5 order to save the taxpayers of this state unnecessary
6 expense in the development of the regional jail system.

7 No moneys shall be expended for regional jail
8 construction from the regional jail and development
9 fund and no final site selection for a regional jail shall
10 be made by the regional jail and correctional facility
11 authority until (1) the regional jail commissions are
12 formed and activated under the provisions of section six,
13 article twenty, chapter thirty-one of this code, and
14 (2) the regional jail commission for the region in which
15 a jail is to be constructed submits the report provided
16 for under the provisions of section seven, article twenty,
17 chapter thirty-one of this code: *Provided*, That this
18 section shall not apply to the regional jail commission
19 previously established for the region consisting of
20 Berkeley, Morgan and Jefferson counties.

21 Notwithstanding any other provision of this article,
22 the regional jail and correctional facility authority shall
23 present a written report to the joint committee on
24 government and finance of the Legislature no later than

25 the meeting of such committee in the month of De-
26 cember, one thousand nine hundred eighty-seven, which
27 will show that the authority has done the following:

28 (a) Completed a comprehensive plan as required in
29 section five of this article;

30 (b) Specified which counties are to be formed into
31 regions as required in section five of this article;

32 (c) Appointed a regional jail commission in each
33 region as required by section six of this article;

34 (d) Developed through the jail and correctional
35 facility standards commission, jail and correctional
36 facility standards as required by section nine of this
37 article;

38 (e) That the authority in obtaining or attempting to
39 obtain land or buildings for regional jail facilities has
40 considered all available options which will minimize
41 costs while maximizing the effectiveness of this article,
42 including, but not limited to, the option of obtaining
43 land through offers of such by county or local govern-
44 ments; and

45 (f) That the authority has developed plans which will
46 utilize regional jail facilities for the housing of convicted
47 felons who have committed nonviolent crimes. Such
48 plans are to provide that the convicted felons shall be
49 housed separately from those persons serving time for
50 misdemeanor offenses. The development of the plans
51 shall be a cooperative effort between the authority and
52 the department of corrections inasmuch as it is the
53 intent of the Legislature that the penal system of this
54 state shall be a consolidated system of both the regional
55 jail system and the state correctional institutions.

§31-20-26. Legislative oversight committee.

1 The president of the Senate and the speaker of the
2 House of Delegates shall each designate five members
3 of their respective houses, at least one of whom shall be
4 a member of the minority party, to serve on a legislative

5 oversight committee charged with immediate and
6 ongoing oversight of the authority and the commissions,
7 and functions and duties thereof created by this article.
8 This committee shall report regularly at each legislative
9 session on the implementation of the purposes set forth
10 in section one-a of this article. It shall regularly
11 investigate all matters relating to integrity, probity, and
12 foresight in funding, operating, and planning the
13 correctional system on state, regional, and county levels.
14 Specifically, the committee shall study and make
15 recommendations to the Legislature as to the revision of
16 the system of classifying inmates, with a view variously
17 to decreasing the prison population confined in "maxi-
18 mum security" facilities and to designating and meeting
19 the needs of inmates classified as elderly, disabled, or
20 otherwise handicapped.

21 The committee shall further study and inform the
22 state judiciary of the impact of sentencing on the
23 composition of the prison population in proportion to the
24 use of facilities. It shall recommend alternatives to long-
25 term sentencing, and shall recommend measures to
26 improve the quality of correctional staff and facilitate
27 its nonconfrontational contacts with inmates. The
28 committee shall investigate means to structure inmates'
29 time to ensure genuine and willing reaccommodations
30 to societal norms; shall probe and coordinate all
31 available means for funding state, regional, and county
32 correctional facilities; and shall contract with penal
33 experts to study these issues in appropriate depth and
34 perspective. Annually, to predict a prudent use of
35 available funds, the committee shall study the profile of
36 the inmate population with regard to its age and social
37 background and needs.

38 The committee shall recommend to the Legislature
39 the funding required to execute such functions. It shall
40 meet regularly with the governing body of the authority
41 established in this article to determine what may be
42 required for full and timely compliance with all court-
43 ordered changes in the correctional system and shall
44 recommend funding for such changes.

CHAPTER 176

(S. B. 182—By Senator Hawse)

[Passed March 15, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-f, relating to the contractual relationship between farm, construction, industrial or outdoor power equipment retail dealers and their suppliers generally; providing a short title by which the article may be known and cited; providing certain definitions of terms used with respect thereto; requiring certain notices to be given by one party to such contracts to the other party thereto with respect to the termination of any contractual arrangement between them and the time requirements with respect to such notice; providing for certain exceptions with respect to such terminations; the manner, form and content of such notifications; requiring the supplier to repurchase dealer inventory at the time of such termination and the terms of such repurchase; providing exceptions with respect to such repurchase requirements; providing for certain rules with respect to the applicability of the uniform commercial code; providing certain rules with respect to outstanding warranty claims at the time of termination; certain civil remedies against the suppliers available to such dealers and the amounts of recovery with respect to actions brought in such cases; providing for the applicability of certain other legal remedies; and providing for a period of limitations with respect to any actions brought pursuant to said article.

Be it enacted by the Legislature of West Virginia:

That chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eleven-f, to read as follows:

ARTICLE 11F. FARM EQUIPMENT DEALER CONTRACT ACT.

- §47-11F-1. Short title.
- §47-11F-2. Definitions.
- §47-11F-3. Notice of termination of agreement or contract.
- §47-11F-4. Supplier requirement to repurchase dealer inventory; terms of repurchase.
- §47-11F-5. Exceptions to repurchase requirement.
- §47-11F-6. Applicability of uniform commercial practices.
- §47-11F-7. Warranty claims.
- §47-11F-8. Civil remedies applicable.

§47-11F-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "West Virginia Farm Equipment Dealer Contract Act."

§47-11F-2. Definitions.

- 1 (a) As used in this article, unless the context in which
- 2 used clearly requires otherwise:

- 3 (1) "Agreement" or "contract" means a written or oral
- 4 agreement or contract between a dealer and a supplier,
- 5 by the terms of which the dealer is granted the right
- 6 to sell the supplier's equipment and the dealer is
- 7 required to order and maintain inventory from such
- 8 supplier in excess of ten thousand dollars at current net
- 9 price.

- 10 (2) "Current net price" means the price listed in the
- 11 supplier's price list in effect at the time an agreement
- 12 is terminated, less any applicable discount allowed.

- 13 (3) "Dealer" means any person, firm, partnership,
- 14 association, corporation or other business entity engaged
- 15 in the business of selling, at retail, farm, construction,
- 16 industrial or outdoor power equipment or any combina-
- 17 tion of the foregoing and who maintains a total inven-
- 18 tory of new equipment and repair parts having an
- 19 aggregate value of not less than twenty-five thousand
- 20 dollars at current net price and who provides repair
- 21 service for such equipment.

- 22 (4) "Inventory" means the tractors, implements,
- 23 attachments, equipment, and repair parts that the
- 24 dealer purchased from the supplier, including, but not
- 25 limited to, any data processing hardware and software,
- 26 special service tools, and business signs the supplier has
- 27 required the dealer to purchase and maintain.

28 (5) "Net cost" means the price paid by the dealer to
29 the supplier for the inventory, less all applicable
30 discounts allowed, plus the amount the dealer paid for
31 freight costs from the supplier's location to the dealer's
32 location and the reasonable cost of assembly incurred or
33 performed by the dealer.

34 (6) "Supplier" means a wholesaler, manufacturer or
35 distributor who enters into an agreement with a dealer
36 and who supplies inventory to such dealer.

37 (7) "Termination" means the termination, cancella-
38 tion, nonrenewal or discontinuation of an agreement.

39 (b) The terms "farm," "construction," "industrial" or
40 "outdoor power," when used to refer to tractors,
41 implements, attachments or repair parts shall have the
42 meaning commonly used and understood among dealers
43 and suppliers subject to this article.

**§47-11F-3. Notice of termination of agreement or
contract.**

1 (a) The provisions of any agreement to the contrary
2 notwithstanding, a supplier who terminates a contract
3 or agreement with a dealer shall notify such dealer of
4 the termination not less than six months prior to the
5 effective date thereof: *Provided*, That the supplier may
6 terminate the agreement at anytime after the occur-
7 rence of any of the following described events:

8 (1) The filing of a petition for bankruptcy or for
9 receivership filed either by or against the dealer;

10 (2) The dealer defaults under a chattel mortgage or
11 other security agreement between the dealer and the
12 supplier;

13 (3) The dealer has made an intentional misrepresen-
14 tation with the intent to defraud the supplier;

15 (4) The close out or sale or discontinuance of all or at
16 least fifty percent of the dealer's business related to the
17 handling of goods or products of the supplier;

18 (5) If the dealer is a partnership or corporation, the

19 commencement of dissolution or liquidation, whether
20 voluntary or involuntary of such dealer;

21 (6) A change in location of the dealer's principal place
22 of business as provided in the agreement without the
23 prior written approval of the supplier;

24 (7) The withdrawal of an individual proprietor,
25 partner, major shareholder, or the involuntary termina-
26 tion of the manager of the dealership or a substantial
27 reduction in the interest of a partner or major share-
28 holder without the prior written approval of the
29 supplier. If the dealership is operated from more than
30 one location, the involuntary termination of a manager
31 at one or more branch locations without the prior
32 written approval of the supplier shall not be grounds for
33 termination of the dealership by the supplier;

34 (8) The revocation or discontinuance by a guarantor
35 or of any guarantee of the dealer's present or future
36 obligations to the supplier.

37 (b) The provisions of any agreement to the contrary
38 notwithstanding, a dealer who terminates an agreement
39 or contract with a supplier shall notify such supplier of
40 the termination not less than six months prior to the
41 effective date thereof.

42 (c) Any agreement or contract may also be terminated
43 by the written mutual consent of the parties; and the
44 effective date of such termination may be such as is
45 mutually agreed upon by the parties.

46 (d) Notification under this section shall be in writing
47 and shall be given by certified mail, return receipt
48 requested, or by personal delivery to the recipient and
49 the receipt thereof acknowledged in writing by such
50 recipient. Any such notice of termination shall contain
51 (i) a statement of intention to terminate the agreement;
52 (ii) a statement of the reasons for such termination; and
53 (iii) the date on which the termination is to take effect.

**§47-11F-4. Supplier requirement to repurchase dealer
inventory; terms of repurchase.**

1 (a) The provisions of any agreement to the contrary
2 notwithstanding, whenever an agreement or contract
3 between a dealer and a supplier is terminated by either
4 party, the supplier shall repurchase the dealer's
5 inventory as provided in this article unless the dealer
6 chooses to keep the inventory and so advises the supplier
7 in writing.

8 (b) The supplier's obligation to repurchase the
9 dealer's inventory shall apply to any successor in
10 interest or assignee of that supplier. A successor in
11 interest includes any purchaser of assets or stock, any
12 surviving corporation resulting from a merger or
13 liquidation, any receiver, or any trustee of the original
14 supplier.

15 (c) If the dealer dies or becomes incompetent, the
16 supplier shall, at the option of the heir, repurchase the
17 inventory to the same extent as if the agreement had
18 been terminated. The heir has one year from the date
19 of the death of the dealer or from the date such dealer
20 is determined to be incompetent to exercise the options
21 of the dealer under this article.

22 (d) The supplier shall repurchase from the dealer
23 within ninety days from the date of termination of the
24 agreement or contract all inventory previously pur-
25 chased from the supplier that remains unsold on the
26 date of termination of the agreement or contract,
27 including, but not limited to, all data processing
28 hardware and software, special services tools, and
29 business signs that the supplier required the dealer to
30 purchase.

31 (e) The supplier shall pay the dealer:

32 (1) One hundred percent of the net cost of all new,
33 unused, undamaged and complete inventory, except
34 repair parts, special service tools, business signs and
35 data processing equipment, less a reasonable allowance
36 for deterioration attributable to weather conditions at
37 the dealer's location; and

38 (2) Ninety percent of the current net price of all new,

39 unused, and undamaged repair parts that are currently
40 listed in the supplier's price book as of the effective date
41 of such termination; and

42 (3) Seventy-five percent of the net cost of all undam-
43 aged special service tools and business signs in the
44 possession of the dealer which are currently available;
45 and

46 (4) Net cost less twenty percent per year depreciation
47 of all data processing hardware and software that the
48 supplier required the dealer to purchase or the supplier
49 shall assume all data processing hardware and software
50 lease responsibilities of the dealer if the supplier
51 required the dealer to lease the data processing
52 hardware and software from a specific supplier of such
53 hardware and/or software.

54 (f) The inventory shall be returned F.O.B. (which
55 means "free on board") to the dealership and the dealer
56 shall bear the expenses and risk of putting them into
57 the possession of the carrier. The supplier may perform
58 the handling, packing, and loading of repair parts
59 returned and withhold, as a charge for these services,
60 five percent of the current net price of the returned
61 repair parts. The dealer and the supplier may each
62 furnish a representative to inspect all inventory and
63 certify as to its acceptability before being returned.

64 (g) The supplier shall pay the full repurchase amount
65 as required by subsection (d) of this section not later
66 than ninety days after receipt of the inventory by the
67 supplier.

§47-11F-5. Exceptions to repurchase requirement.

1 Any other provisions of this article to the contrary
2 notwithstanding, a supplier shall not be required to
3 repurchase from the dealer (i) a repair part of or with
4 a limited storage life or which is otherwise subject to
5 deterioration; that is to say by way of example and not
6 in limitation thereof, such items as gaskets or batteries;
7 (ii) multiple packaged repair parts when the package
8 has been broken; (iii) a repair part that because of its

9 condition is not resalable as a new part without
10 repackaging or reconditioning; (iv) any portion of the
11 inventory that the dealer chooses to retain; or (v) any
12 inventory that was acquired by the dealer from a source
13 other than the supplier, except for data processing
14 hardware and software, special service tools, and
15 business signs that the supplier required the dealer to
16 purchase; and (vi) any tractor, implement, attachment
17 or equipment that the dealer purchased from the
18 supplier more than thirty-six months before the date of
19 the termination notice.

§47-11F-6. Applicability of uniform commercial practices.

1 (a) The provisions of this article do not affect a
2 security interest of the supplier in the inventory of the
3 dealer.

4 (b) A repurchase of inventory pursuant to this article
5 shall not be subject to the bulk transfer provisions of
6 article six, chapter forty-six of this code.

§47-11F-7. Warranty claims.

1 If after the termination of a contract or agreement,
2 the dealer submits a warranty claim to the supplier for
3 work performed prior to the effective date of the
4 termination of such contract or agreement, the supplier
5 shall accept or reject such claim within a minimum of
6 forty-five days from the day the supplier received the
7 warranty claim. A warranty claim not rejected before
8 the expiration of such forty-five-day period shall be
9 deemed to be accepted by the supplier. In the event a
10 warranty claim is accepted by the supplier as pres-
11 cribed in this section, such claim shall be paid by such
12 supplier not later than sixty days from the date the
13 supplier received the claim.

§47-11F-8. Civil remedies applicable.

1 (a) The provisions of any agreement to the contrary
2 notwithstanding, if a supplier fails or refuses without
3 just cause to repurchase any inventory or portion thereof
4 when required to do so under the provisions of this

5 article within the time periods prescribed thereby, such
6 supplier shall be civilly liable for (i) one hundred
7 percent of the current net price of the inventory or
8 portion thereof not repurchased; (ii) the amount the
9 dealer paid for freight costs from the supplier's location
10 to the dealer's location; (iii) the reasonable cost of
11 assembly performed by the dealer; (iv) reasonable
12 attorney's fees and court costs incurred by the dealer in
13 requiring the supplier to comply with this article of the
14 code; and (v) interest on the current net price of the
15 inventory or portion thereof not repurchased, computed
16 at the prime rate of interest commencing the ninety-first
17 day after termination of the contract agreement, and
18 recomputed quarterly thereafter.

19 (b) Any person who suffers monetary loss due to a
20 violation of this article or because he or she refuses to
21 accede to a proposal for an arrangement that, if
22 consummated, is in violation of this article, may bring
23 civil action to enjoin further violation and to recover
24 damages sustained by him or her together with the costs
25 of the suit, including reasonable attorney's fees and
26 court costs.

27 (c) In the event of failure to provide the required
28 notice of termination or otherwise comply with provi-
29 sions of this article, the supplier shall be civilly liable
30 for the dealer's loss of business for the time period the
31 supplier is in violation of the notice of termination
32 provisions of the article, plus reasonable attorney's fees
33 and court costs.

34 (d) The provisions of this section are in addition to all
35 legal or equitable remedies available at law, as well as
36 any remedies available pursuant to any agreement
37 between the supplier and dealer.

38 (e) A civil action commenced under the provisions of
39 this article may be brought until the expiration of five
40 years after the violation complained of is or reasonably
41 should have been discovered, whichever occurs first.

CHAPTER 177

(H. B. 2754—By Delegates S. Cook and Hatfield)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty-five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to resident trustee accounts required, reports.

Be it enacted by the Legislature of West Virginia:

That section one, article twenty-five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 25. RESIDENT TRUSTEE ACCOUNTS.

§5-25-1. Resident trustee accounts required, reports.

1 All state institutions including, but not limited to,
2 those institutions under the control of the department of
3 veterans affairs, the department of health, or the
4 department of human services which provide custodial
5 care for any person for any purpose whatsoever shall
6 establish resident trustee accounts for all persons
7 resident at the institution who request such accounts or
8 who are unable to manage their own funds. The
9 administrator in charge of the institution shall take
10 possession of all money or other valuables on the person
11 of or sent to each resident for whom a trustee account
12 has been established: *Provided*, That this article shall
13 not apply to state institutions under the control of the
14 department of corrections or where there is a legal
15 representative appointed for such person.

16 The administrator shall credit such money and
17 valuables to the resident entitled thereto and shall keep
18 an accurate record of all moneys and valuables received

19 or disbursed. This account is subject to examination by
20 the head of the department which controls the institu-
21 tion. The administrator shall deposit such fiduciary
22 funds received into federally insured account approved
23 by the director of the department except for those funds
24 required to be kept locally. The local funds shall be
25 deposited in one or more responsible banks. The
26 accounts shall be designated "resident trustee account."

27 The administrator shall ensure that proper disburse-
28 ments are made from the "resident trustee account"
29 when required for the maintenance of the resident or
30 when agreed to by the resident.

31 The administrator shall deliver to the resident, or to
32 the resident's responsible representative payee when
33 applicable, at the time the resident leaves the institution
34 all valuables or moneys then credited to the resident or,
35 in the case of the death of a resident before leaving the
36 institution, the administrator shall deliver such property
37 to the resident's representative.

38 The administrator of the institution shall submit a
39 monthly report to the head of the department control-
40 ling the institution. This report shall provide a recon-
41 ciliation of each resident trustee account or other
42 fiduciary account maintained by the institution.

43 The director of any department who receives these
44 monthly reports shall submit each month to the legis-
45 lative auditor a record of the reconciliations for each
46 institution.

CHAPTER 178

(H. B. 2757—By Delegates Whitt and Helmick)

[Passed April 8, 1989; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section three, article five,
chapter five of the code of West Virginia, one thousand
nine hundred thirty-one, as amended; and to amend and
reenact section twenty-nine, article two, chapter fifteen

of said code, all relating to retirement; the department of public safety; providing that the amount received for permanent and total disability incurred in the performance of duty may not be less than fifteen thousand dollars per year if such disability is to the extent that it prevents the disabled from ever engaging in any gainful employment; and providing that lump sum payments for unused accrued annual leave may not enter into final average salary computation for purposes of retirement.

Be it enacted by the Legislature of West Virginia:

That section three, article five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-nine, article two, chapter fifteen of said code be amended and reenacted, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Officers, Programs, Etc.

15. Public Safety.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-3. Optional payment to employee in lump sum amount for accrued and unused annual leave at termination of employment; no withholding of any employee contribution deduction; exception.

- 1 Every eligible employee, as defined in section one of
2 this article, at the time his or her active employment
3 ends due to resignation, death, retirement or otherwise,
4 may be paid in a lump sum amount, at his or her option,
5 for accrued and unused annual leave at the employee's

6 usual rate of pay at such time. The lump sum payment
7 shall be made by the time of what would have been the
8 employee's next regular payday had his employment
9 continued. In determining the amount of annual leave
10 entitlement, weekends, holidays or other periods of
11 normal, noncountable time shall be excluded, and no
12 deductions may be made for contributions toward
13 retirement from lump sum payments for unused,
14 accrued annual leave, since no period of service credit
15 is granted in relation thereto; however, such lump sum
16 payment may not be a part of final average salary
17 computation; and where any such deduction of employee
18 contribution may have been heretofore made, a refund
19 of such shall be granted the former employee and made
20 by the head of the respective former employer spending
21 unit: *Provided*, That the superintendent of the
22 department of public safety shall make deductions for
23 retirement contributions of members of the department,
24 since retirement benefits are based on cumulative
25 earnings rather than period of service.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-29. Awards and benefits for disability—Incurred in performance of duty.

1 Any member of said department who has been or shall
2 become physically or mentally permanently disabled by
3 injury, illness or disease resulting from any occupational
4 risk or hazard inherent in or peculiar to the services
5 required of members of said department and incurred
6 pursuant to or while such member was or shall be
7 engaged in the performance of his duties as a member
8 of said department shall, if, in the opinion of the
9 retirement board, he is by reason of such cause unable
10 to perform adequately the duties required of him as a
11 member of said department, be retired from active
12 service by the retirement board and thereafter such
13 member shall be entitled to receive annually and there
14 shall be paid to such member from the death, disability
15 and retirement fund in equal monthly installments
16 during the natural lifetime of such member or until

17 such disability shall sooner terminate, one or the other
18 of two amounts, whichever is greater:

19 (1) An amount equal to five and one-half percent of
20 the total salary which would have been earned during
21 twenty-five years or actual service if more than twenty-
22 five years in said department based on the average
23 earnings of such member while employed as a member
24 of said department; or

25 (2) The sum of six thousand dollars.

26 If such disability shall be permanent and total to the
27 extent that such member is or shall be incapacitated
28 ever to engage in any gainful employment, such member
29 shall be entitled to receive annually and there shall be
30 paid to such member from the death, disability and
31 retirement fund in equal monthly installments during
32 the natural lifetime of such member or until such
33 disability shall sooner terminate, an amount equal to
34 eight and one-half percent of the total salary which
35 would have been earned by such member during
36 twenty-five years or actual service if more than twenty-
37 five years of service in said department based on the
38 average earnings of such member while employed as a
39 member of said department: *Provided*, That on and after
40 the first day of July, one thousand nine hundred eighty-
41 nine, in no event may such amount be less than fifteen
42 thousand dollars per annum.

43 The superintendent is authorized to expend moneys
44 from funds appropriated for the department in payment
45 of medical, surgical, laboratory, X-ray, hospital,
46 ambulance and dental expenses and fees, and reasonable
47 costs and expenses incurred in purchase of artificial
48 limbs and other approved appliances which may be
49 reasonably necessary for any member of said
50 department who has or shall become temporarily,
51 permanently or totally disabled by injury, illness or
52 disease resulting from any occupational risk or hazard
53 inherent in or peculiar to the service required of
54 members of said department and incurred pursuant to
55 or while such member was or shall be engaged in the
56 performance of duties as a member of said department.

- 1 Whenever the superintendent shall determine that any
- 2 disabled member is ineligible to receive any of the
- 3 aforesaid benefits at public expense the superintendent
- 4 shall, at the request of such disabled member, refer such
- 5 matter to the retirement board for hearing and final
- 6 decision.

CHAPTER 179

(H. B. 2414—By Delegates Seacrist and Rollins)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fourteen-d, article three, chapter thirty-three of said code, all relating to retirement benefits for certain municipal employees; requiring municipalities to contribute a minimum amount to its pension and relief funds as determined by the actuarial report; and providing that once the actuarial report determines there is no deficiency in these funds, municipalities are not then required to contribute funds from the municipal pensions and protection fund.

Be it enacted by the Legislature of West Virginia:

That section twenty, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section fourteen-d, article three, chapter thirty-three of said code be amended and reenacted, all to read as follows:

Chapter

8. Municipal Corporations.

33. Insurance.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICE-
MEN'S PENSION AND RELIEF FUND; FIRE-
MEN'S PENSION AND RELIEF FUND; PENSION
PLANS FOR EMPLOYEES OF WATERWORKS
SYSTEM, SEWERAGE SYSTEM OR COMBINED
WATERWORKS AND SEWERAGE SYSTEM.

§8-22-20. Minimum standards for actuarial soundness.

1 The board of trustees for each pension and relief fund
2 shall have regularly scheduled actuarial valuation
3 reports prepared by a qualified actuary. All of the
4 following standards must be met:

5 (a) An actuarial valuation report shall be prepared at
6 least once every three years commencing with the later
7 of (1) the first day of July, one thousand nine hundred
8 eighty-three, or (2) three years following the most
9 recently prepared actuarial valuation report: *Provided,*
10 That this most recently prepared actuarial valuation
11 report meets all of the standards of this section.

12 (b) The actuarial valuation report shall consist of, but
13 is not limited to, the following disclosures: (1) The
14 financial objective of the fund and how the objective is
15 to be attained, (2) the progress being made toward
16 realization of the financial objective, (3) recent changes
17 in the nature of the fund, benefits provided, or actuarial
18 assumptions or methods, (4) the frequency of actuarial
19 valuation reports and the date of the most recent
20 actuarial valuation report, (5) the method used to value
21 fund assets, (6) the extent to which the qualified actuary
22 relies on the data provided and whether the data was
23 certified by the fund's auditor or examined by the
24 qualified actuary for reasonableness, (7) a description
25 and explanation of the actuarial assumptions and
26 methods, and (8) any other information the qualified
27 actuary feels is necessary or would be useful in fully and
28 fairly disclosing the actuarial condition of the fund.

29 (c) After the thirtieth day of June, one thousand nine
30 hundred eighty-three, and thereafter, the financial
31 objective of each municipality shall not be less than to
32 contribute to the fund annually an amount which,
33 together with the contributions from the members and
34 the allocable portion of the state premium tax fund for

35 municipal pension and relief funds established under
36 section fourteen-d, article three, chapter thirty-three of
37 this code and other income sources as authorized by law,
38 will be sufficient to meet the normal cost of the fund
39 and amortize any actuarial deficiency over a period of
40 not more than forty years: *Provided*, That for those
41 funds in existence on the first day of July, one thousand
42 nine hundred eighty-one, its actuarial deficiency, if any,
43 shall not be amortized over a period longer than that
44 which remains under its current schedule. For purposes
45 of determining this minimum financial objective, (1) the
46 value of the fund's assets shall be determined on the
47 basis of any reasonable actuarial method of valuation
48 which takes into account fair market value, and (2) all
49 costs, deficiencies, rate of interest, and other factors
50 under the fund shall be determined on the basis of
51 actuarial assumptions and methods which, in aggregate,
52 are reasonable (taking into account the experience of the
53 fund and reasonable expectations) and which, in com-
54 bination, offer the qualified actuary's best estimate of
55 anticipated experience under the fund. If as a result of
56 this legislation a municipality's financial commitment to
57 the fund is materially increased, the municipality may
58 elect to phase in this increase over the five fiscal years
59 commencing the first day of July, one thousand nine
60 hundred eighty-three.

61 Notwithstanding any other provision of this section or
62 article to the contrary, each municipality shall contrib-
63 ute annually to the fund an amount which may not be
64 less than the normal cost, as determined by the actuarial
65 report.

66 (d) For purposes of this section the term "qualified
67 actuary" means only an actuary who is a member of the
68 society of actuaries or the American academy of
69 actuaries. The qualified actuary shall be designated a
70 fiduciary and shall discharge his duties with respect to
71 a fund solely in the interest of the members and
72 member's beneficiaries of that fund. In order for the
73 standards of this section to be met, the qualified actuary
74 shall certify that the actuarial valuation report is
75 complete and accurate and that in his opinion the

76 technique and assumptions used are reasonable and
77 meet the requirements of this section of this article.

78 (e) The cost of the preparation of the actuarial
79 valuation report shall be paid by the fund.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

1 (a) For the purpose of providing additional revenue
2 for municipal policemen's and firemen's pension and
3 relief funds and additional revenue for volunteer and
4 part volunteer fire companies and departments, there is
5 hereby levied and imposed, on and after the first day
6 of January, one thousand nine hundred eighty-two, an
7 additional premium tax equal to one percent of gross
8 direct premiums collected, less premiums returned to
9 policyholders because of cancellation of policies, for fire
10 insurance and casualty insurance policies. For purposes
11 of this section, casualty insurance shall not include
12 insurance on the life of a debtor pursuant to or in
13 connection with a specific loan or other credit transac-
14 tion or insurance on a debtor to provide indemnity for
15 payments becoming due on a specific loan or other
16 credit transaction while the debtor is disabled as defined
17 in the policy. Except as otherwise provided in this
18 section, all provisions of this article relating to the levy,
19 imposition and collection of the regular premium tax
20 are applicable to the levy, imposition and collection of
21 the additional tax.

22 All moneys collected from this additional tax shall be
23 received by the commissioner and paid by him into a
24 special account in the state treasury, designated the
25 municipal pensions and protection fund. The net
26 proceeds of this tax after appropriation thereof by the
27 Legislature shall be distributed in accordance with the
28 provisions of subsection (c) of this section.

29 (b) Before the first day of August, one thousand nine
30 hundred eighty-three, and before the first day of August

31 of each calendar year thereafter, the treasurer of each
32 municipality in which a municipal policemen's or
33 firemen's pension and relief fund has been established
34 shall report to the state treasurer the average monthly
35 number of members who worked at least one hundred
36 hours per month of municipal policemen's or firemen's
37 pension systems during the preceding fiscal year. Before
38 the first day of August, one thousand nine hundred
39 eighty-three, and before the first day of August of each
40 calendar year thereafter, the state fire marshal shall
41 report to the state treasurer the names and addresses
42 of all volunteer and part volunteer fire companies and
43 departments within the state which meet the eligibility
44 requirements established in section eight-a, article
45 fifteen, chapter eight of this code.

46 Before the first day of September, one thousand nine
47 hundred eighty-three, and before the first day of
48 September of each calendar year thereafter, the state
49 treasurer shall allocate and authorize for distribution
50 the revenues in the municipal pensions and protection
51 fund which were collected during the preceding ca-
52 lendar year to municipal policemen's and firemen's
53 pension and relief funds and to volunteer and part
54 volunteer fire companies and departments. Seventy-five
55 percent of the aforementioned revenues allocated shall
56 be allocated to municipal policemen's and firemen's
57 pension and relief funds and twenty-five percent of such
58 allocated revenues shall be allocated to volunteer and
59 part volunteer fire companies and departments: *Pro-*
60 *vided*, That in any year the actuarial report required by
61 section twenty, article twenty-two, chapter eight of this
62 code indicates no actuarial deficiency in the municipal
63 policemen's or firemen's pension and relief fund, no
64 revenues may be allocated from the municipal pensions
65 and protection fund to that fund. The revenues from the
66 municipal pensions and protection fund shall then be
67 allocated to all other pension funds which have an
68 actuarial deficiency.

69 (c) (1) Each municipal pension and relief fund shall
70 have allocated and authorized for distribution a pro rata
71 share of the revenues allocated to municipal policemen's

72 and firemen's pension and relief funds based upon the
73 corresponding municipality's average monthly number
74 of members who worked at least one hundred hours per
75 month during the preceding fiscal year. All moneys
76 received by municipal pension and relief funds under
77 this section may be expended only for the purposes
78 described in sections sixteen through twenty-eight,
79 article twenty-two, chapter eight of this code.

80 (2) Each volunteer fire company or department shall
81 receive an equal share of the revenues allocated for
82 volunteer and part volunteer fire companies and
83 departments.

84 (3) In addition to the share allocated and distributed
85 in accordance with subdivision (1) of this subsection,
86 each municipal fire department composed of full-time
87 paid members and volunteers and part volunteer fire
88 companies and departments shall receive a share equal
89 to the share distributed to volunteer fire companies
90 under subdivision (2) of this subsection reduced by an
91 amount equal to such share multiplied by the ratio of
92 the number of full-time paid fire department members
93 who are also members of a municipal firemen's pension
94 system to the total number of members of such fire
95 department.

96 (d) The allocation and distribution of revenues pro-
97 vided for in this section are subject to the provisions of
98 section twenty, article twenty-two, and sections eight-a
99 and eight-b, article fifteen, chapter eight of this code.

CHAPTER 180

(H. B. 2322—By Delegate Seacrist)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article ten-c, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to contributions paid public employees who are members of the firemen's pension and relief fund and policemen's pension and relief fund.

Be it enacted by the Legislature of West Virginia:

That section three, article ten-c, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.

§5-10C-3. Definitions.

1 The following words and phrases as used in this
2 article, unless a different meaning is clearly indicated
3 by the context, shall have the following meanings:

4 (1) "Accumulated contributions" means the sum of all
5 amounts credited to a member's individual account in
6 the members' deposit fund and includes both contribu-
7 tions deducted from the compensation of a member and
8 contributions of a member picked up and paid by the
9 member's participating public employer, plus applica-
10 ble interest thereon.

11 (2) "Board of trustees" means, as appropriate: The
12 board of trustees of the West Virginia public employees
13 retirement system created in article ten, chapter five of
14 this code; the retirement board of the West Virginia
15 department of public safety death, disability and
16 retirement fund created in section twenty-six, article
17 two, chapter fifteen of this code; the retirement board
18 of the state teachers and board of regents retirement
19 system created in article seven-a, chapter eighteen of
20 this code; the governing board of the board of regents
21 supplemental and additional retirement plans created in
22 section four-a, article twenty-three, chapter eighteen of
23 this code; the retirement board of the judges' retirement
24 system created in article nine, chapter fifty-one of this
25 code; or the board of trustees of the firemen's and
26 policemen's pension and relief funds created in article
27 twenty-two, chapter eight of this code.

28 (3) "Employee" means any person, whether appointed,
29 elected, or under contract, providing services for a
30 public employer, for which compensation is paid and
31 who is a member of the retirement system.

32 (4) "Member" means any employee who is included in
33 a retirement system.

34 (5) "Member contributions" means, as appropriate:
35 The contributions required by section twenty-nine,
36 article ten, chapter five of this code, from employees
37 who are members of the West Virginia public employees
38 retirement system; the contributions required by section
39 twenty-six, article two, chapter fifteen of this code, from
40 employees who are members of the West Virginia
41 department of public safety death, disability and
42 retirement fund; the contributions required by section
43 fourteen, article seven-a, chapter eighteen of this code,
44 from employees who are members of the state teachers
45 retirement system; the contributions authorized by
46 section fourteen-a, article seven-a, chapter eighteen or
47 by section four-a, article twenty-three, chapter eighteen,
48 from employees who are members of the West Virginia
49 board of regents retirement plans; the contributions
50 required by section four, article nine, chapter fifty-one
51 of this code, from employees who are members of the
52 judges' retirement system; or the contributions required
53 by section sixteen, article twenty-two, chapter eight of
54 this code, from employees who are members of the
55 firemen's and policemen's pension and relief funds.

56 (6) "Participating public employer" means the state of
57 West Virginia, any board, commission, department,
58 institution or spending unit, and shall include any
59 agency created by rule of the supreme court of appeals
60 having full-time employees, which for the purpose of
61 this article shall be deemed a department of state
62 government, and county boards of education with
63 respect to teachers employed by them; any political
64 subdivision in the state which has elected to cover its
65 employees, as defined in this article, under the West
66 Virginia public employees retirement system; and any
67 political subdivision in this state which is subject to the
68 provisions of article twenty-two, chapter eight of this
69 code.

70 (7) "Political subdivision" means the state of West
71 Virginia, a county, city or town in the state; a school
72 corporation or corporate unit; any separate corporation

73 or instrumentality established by one or more counties,
74 cities or towns, as permitted by law; any corporation or
75 instrumentality supported in most part by counties,
76 cities or towns; any public corporation charged by law
77 with the performance of a governmental function and
78 whose jurisdiction is coextensive with one or more
79 counties, cities or towns, any agency or organization
80 established by, or approved by the department of health
81 for the provision of community health or mental
82 retardation services, and which is supported in part by
83 state, county or municipal funds.

84 (8) "Retirement system" means, as appropriate: The
85 West Virginia public employees retirement system
86 created in article ten, chapter five of this code; the West
87 Virginia department of public safety death, disability
88 and retirement fund created in sections twenty-six
89 through thirty-eight, article two, chapter fifteen of this
90 code; the state teachers retirement system created in
91 article seven-a, chapter eighteen of this code; the West
92 Virginia board of regents retirement plans created in
93 section fourteen-a, article seven-a, chapter eighteen and
94 section four-a, article twenty-three, chapter eighteen of
95 this code; the judges' retirement system created in
96 article nine, chapter fifty-one of this code; the firemen's
97 pension and relief fund created in section sixteen, article
98 twenty-two, chapter eight of this code; or the policemen's
99 pension and relief fund created in section sixteen, article
100 twenty-two, chapter eight of this code.

101 (9) "Teacher" shall have the meaning ascribed to it in
102 section three, article seven-a, chapter eighteen of this
103 code.

CHAPTER 181

(Com. Sub. for S. B. 105—By Senators Whillow and Felton)

[Passed April 7, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-a, relating to the creation of an industrial

access road fund and providing funding therefor; specifying purposes for which moneys from the fund may be used; requiring that counties and municipalities guarantee proposed projects; specifying the criteria upon which the highways commissioner is to base his decision to allocate funds; approval of department of highways of proposed industrial access highway; request for funds by resolution of governing body of county or municipality; consultation by the department of highways; placing industrial access roads under the state road system; restrictions on use of the fund; limits on amount of funds to be allocated; eligible items of construction and engineering; disbursements from the fund; and annual audit of the fund.

Be it enacted by the Legislature of West Virginia:

That chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-a, to read as follows:

ARTICLE 3A. INDUSTRIAL ACCESS ROAD FUND.

- §17-3A-1. Industrial access road fund created; construction guarantees by municipalities and counties.
- §17-3A-2. Department of highways to determine construction of industrial access roads.
- §17-3A-3. Industrial access roads to be part of state road system.
- §17-3A-4. Restrictions on use of fund.
- §17-3A-5. Disbursements from fund.
- §17-3A-6. Annual audit to be made of receipts and expenditures of fund.

§17-3A-1. Industrial access road fund created; construction guarantees by municipalities and counties.

- 1 (a) Any other provision of this code notwithstanding,
- 2 there is hereby created in the state treasury the
- 3 "industrial access road fund," hereinafter referred to as
- 4 "the fund." There shall be deposited into the fund one
- 5 half of one percent of all state tax collections which are
- 6 otherwise specifically dedicated by the provisions of this
- 7 code to the state road fund. At the end of each fiscal
- 8 year, all unused moneys in the fund shall revert to the
- 9 state road fund.

10 (b) The moneys in the fund shall be expended by the
11 department of highways for constructing and maintain-
12 ing industrial access roads within counties and munic-
13 ipalities to industrial sites on which manufacturing,
14 processing or other similar establishments, including
15 publicly owned airports, are already constructed or are
16 under firm contract to be constructed. In the event there
17 is no industrial site already constructed or for which the
18 construction is under firm contract, a county or
19 municipality may guarantee to the department of
20 highways by bond or other acceptable device that an
21 industrial site will be constructed and, if no industrial
22 site, acceptable to the department of highways, is
23 constructed within the time limits of the bond, such
24 bond shall be forfeited.

§17-3A-2. Department of highways to determine construction of industrial access roads.

1 In determining whether or not to construct or improve
2 any industrial access road, and in determining the
3 nature of the road to be constructed, the department of
4 highways shall base its decision on the costs of the
5 industrial access road in relation to the volume and
6 nature of the traffic to be generated as a result of
7 developing the industrial site within the total industrial
8 area. In making a decision on any industrial site, the
9 total volume of traffic to be generated shall be considered
10 in regard to the overall cost of the project. The
11 department of highways shall consult and work closely
12 with the governor's office of community and industrial
13 development in determining the use of industrial access
14 road funds.

15 Prior to a formal request for the use of moneys from
16 the fund to provide access to new or expanding industrial
17 sites, the location of the industrial access road shall
18 be submitted for approval of the department of highways.
19 The department of highways shall consider the
20 cost of the industrial access road as it relates to the
21 project's location and as it relates to the possibility of
22 future extensions of the road to serve other possible
23 industrial sites as well as the future development of the
24 surrounding area.

25 Prior to the allocation of moneys from the fund for the
26 construction or maintenance of an industrial access road
27 to an industry proposing to locate or expand in a county
28 or municipality, the governing body of the county or
29 municipality shall, by resolution, request moneys from
30 the fund and shall be responsible for the preliminary
31 negotiations with the industries and other interested
32 parties. The department of highways shall be available
33 for consultation with the governing bodies of the
34 counties or municipalities and other interested parties,
35 and may prepare surveys, plans, engineering studies
36 and cost estimates for the proposed industrial access
37 road.

§17-3A-3. Industrial access roads to be part of state road system.

1 Any industrial access road constructed under this
2 article is a state local service road in the state road
3 system and shall thereafter be maintained in accordance
4 with the provisions of this chapter.

§17-3A-4. Restrictions on use of fund.

1 (a) The fund may not be used for the adjustment of
2 utilities or for the construction of industrial access roads
3 to schools, hospitals, libraries, armories, office buildings,
4 shopping centers, apartment buildings, amusement
5 facilities, government installations or similar facilities,
6 whether public or private. The fund may not be used
7 to construct industrial access roads on private property.

8 (b) Moneys from the fund may not be allocated until
9 the governing body of the county or municipality
10 certifies to the department of highways that the
11 industrial site is constructed and operating or is under
12 firm contract to be constructed or operated, or upon the
13 presentation of acceptable surety in accordance with
14 section one of this article.

15 (c) Not more than three hundred thousand dollars of
16 unmatched moneys from the fund may be allocated for
17 use in any one county in any fiscal year. The maximum
18 amount of unmatched moneys which may be allocated
19 from the fund is ten percent of the capital outlay of the

20 designated industrial establishment. The amount of
21 unmatched funds allocated may be supplemented with
22 additional matched moneys from the fund, in which case
23 the matched moneys allocated from the fund may not
24 exceed one hundred fifty thousand dollars, to be
25 matched equally from sources other than the fund. The
26 amount of matched moneys which may be allocated
27 from the fund over and above the unmatched funds may
28 not exceed five percent of the capital outlay of the
29 designated industrial site.

30 (d) Funds may only be allocated to those items of
31 construction and engineering which are essential to
32 providing an adequate facility to serve the anticipated
33 traffic. Funds may not be allocated for items such as
34 storm sewers, curbs, gutters and extra pavement width
35 unless necessary to extend or connect an existing access
36 road.

§17-3A-5. Disbursements from fund.

1 Any claim of a contractor or others, not otherwise
2 provided for, for labor done or for materials, services or
3 supplies furnished to the department of highways
4 pursuant to the provisions of this article, shall be
5 audited by the commissioner of the department of
6 highways. If the commissioner determines that the
7 claim is valid and correct, the commissioner shall issue
8 a requisition of the department upon the state auditor
9 therefor, showing the nature of the claim and specifying
10 whether the claim is for labor done or materials,
11 services or supplies furnished for the construction or
12 maintenance of state roads, or for other purposes, and
13 the auditor shall issue his warrant upon the state
14 treasurer therefor. The treasurer shall issue the warrant
15 to the person, firm or corporation entitled thereto, out
16 of the funds in the treasury provided for that purpose.
17 The cost of acquiring a right-of-way shall be paid out
18 of the fund.

§17-3A-6. Annual audit to be made of receipts and expenditures of fund.

1 The Legislature, acting through the joint committee
2 on government and finance, shall cause an annual audit

3 to be made by a resident independent certified public
4 accountant of all books, accounts and records relating
5 to all receipts and expenditures of the fund. The
6 commissioner shall make available to the independent
7 auditor or auditors performing the audit all of the
8 department's books, accounts and records pertaining to
9 all moneys received and expended. The auditor or
10 auditors performing the audit shall make available
11 annually the audit report with copies thereof to the
12 members of the Legislature, the governor, the commis-
13 sioner of the department of highways, the secretary of
14 state, the state treasurer, the attorney general and the
15 state auditor. The audit report shall be available to the
16 public in the office of the secretary of state.

17 The Legislature, acting through the joint committee
18 on government and finance, shall obtain the services of
19 a resident independent certified public accountant for
20 this purpose, the cost of which shall be payable out of
21 funds appropriated by the Legislature. Any audits of the
22 funds which have been made by any official auditing
23 agency of the United States government shall be
24 accepted in lieu of the state audit.

CHAPTER 182

(Com. Sub. for S. B. 555—By Senators Loehr, Warner, Hylton,
Holliday, Wagner and Felton)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-five, relating to creating the West Virginia Industrial Road Partnership Act of 1989; setting forth legislative findings; defining terms; allowing companies to apply for a road to be designated an "industrial road"; funding for the construction or upgrading of the industrial road; requiring the commissioner of the department of highways to establish a program for designating industrial roads and

providing criteria therefor; creation of a special revenue fund; powers of the commissioner; expiration of the article; authorizing the commissioner to promulgate rules; and severability.

Be it enacted by the Legislature of West Virginia:

That chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-five, to read as follows:

ARTICLE 25. THE WEST VIRGINIA INDUSTRIAL ROAD PARTNERSHIP ACT OF 1989.

- §17-25-1. Legislative finding.
- §17-25-2. Definitions.
- §17-25-3. Application to designate industrial road.
- §17-25-4. Industrial roads; how designated.
- §17-25-5. Standards to be established by commissioner.
- §17-25-6. Special revenue fund created.
- §17-25-7. Powers of the commissioner.
- §17-25-8. Expiration of article.
- §17-25-9. Rules.
- §17-25-10. Severability clause; interpretation.

§17-25-1. Legislative finding.

1 The Legislature hereby finds that the continued and
2 future success of the coal industry is greatly dependent
3 upon a quality network of roads and highways. Critical
4 market forces make it imperative for such a road system
5 to be constructed and maintained. It is the responsibility
6 of the state and all industry to form a partnership to
7 accomplish this goal. "Industrial roads," for the pur-
8 poses of this article, may be construed to include a single
9 bridge or combination of bridges.

§17-25-2. Definitions.

- 1 (a) "Company" means an individual, partnership or
2 corporation licensed under the laws of the state of West
3 Virginia and engaged in any industrial business.
- 4 (b) "Industrial road" means a public road of ten miles
5 or less in length which is vital to transporting of coal,
6 or a road, which upon the designation of the commis-
7 sioner, is determined to be vital to one or more
8 companies.

9 (c) "Commissioner" means the commissioner of the
10 department of highways.

11 (d) "Cost" means all funds needed to do engineering,
12 right-of-way acquisition, construction or upgrading.
13 Upgrading does not mean normal routine maintenance.

14 (e) "Department" means the department of highways.

15 (f) "Upgrading" means any work on a highway or
16 bridge which is not routine maintenance.

§17-25-3. Application to designate industrial road.

1 Any company may apply to the commissioner to have
2 a certain road designated an industrial road. The
3 commissioner shall develop an application form. In such
4 application the company shall agree to pay to the
5 department one half of the amount of money needed to
6 bring such road up to the standards needed to become
7 an industrial road. All construction or upgrading to be
8 performed under this article shall be bid out to an
9 independent contractor in such a manner as prescribed
10 in this code. Upon approval of the application by the
11 commissioner the company shall transfer to a special
12 revenue account for the department of highways in the
13 state treasury as set forth in this article a sum equal
14 to one half of costs needed to upgrade or construct the
15 road to standard or the company shall deliver to the
16 commissioner an irrevocable letter of credit drawn on
17 a bank chartered by the state of West Virginia or the
18 federal government in an amount equal to such cost:
19 *Provided*, That the company shall transfer the moneys
20 before any construction or upgrading is contracted for.

21 The department shall then begin the process as
22 outlined in this code to upgrade or construct such public
23 road.

§17-25-4. Industrial roads; how designated.

1 The commissioner shall promulgate rules establishing
2 a program for designating industrial public roads in the
3 state. The criteria for such designation shall include:

4 (a) The economic impact of such road on the coal or
5 other companies which use such public road;

6 (b) The impact on the citizens which use the road in
7 their daily business; and

8 (c) The cost of any improvements which would be
9 necessary to bring the road up to standard versus the
10 benefits.

11 The commissioner shall publicize the program and
12 allow any company to make such application.

§17-25-5. Standards to be established by commissioner.

1 The commissioner shall establish standards for
2 construction and upgrading of industrial roads. In the
3 design of these standards, he shall consult with repre-
4 sentatives or organizations which represent companies.
5 The standards shall provide for:

6 (a) Each road to be at least sixteen feet in width in
7 addition to any berms or shoulders;

8 (b) Design and construction to handle the weight of
9 coal and other industrial trucks and equipment as
10 transported by the companies;

11 (c) Giving the citizens of the area a better road to
12 travel;

13 (d) Having adequate drainage; and

14 (e) Any other feature which the commissioner deter-
15 mines is necessary to carry out the goals of this article.

§17-25-6. Special revenue fund created.

1 There shall be created in the state treasury a special
2 revenue fund to be known as the "Industrial Road
3 Construction Fund." The fund shall receive all funds
4 contributed by companies for the construction of
5 approved roads. Only moneys needed to pay the costs of
6 the roads shall be withdrawn, however, the commis-
7 sioner may use any moneys generated by any earned
8 interest to offset his administrative costs in administer-
9 ing this article.

§17-25-7. Powers of the commissioner.

1 In addition to all other powers conferred upon the
2 commissioner under other provisions of this code, the

- 3 commissioner shall have all powers necessary to carry
4 out the construction, planning or development of any
5 industrial road provided for by this article.

§17-25-8. Expiration of article.

- 1 This article shall expire on the thirty-first day of
2 December, one thousand nine hundred ninety-two,
3 unless reauthorized by the Legislature of the state of
4 West Virginia: *Provided*, That if the governor feels the
5 continuation of this article, before the above mentioned
6 date, would cause a hardship, he may cancel the
7 program. However, any project which is approved by
8 the commissioner shall be completed.

§17-25-9. Rules.

- 1 The commissioner shall have the authority to promul-
2 gate rules to effectuate this article.

§17-25-10. Severability clause; interpretation.

- 1 The provisions of this article are severable and if any
2 of its provisions shall be held unconstitutional, the
3 decision of the court shall not impair the remaining
4 provisions of this article. This article shall be construed
5 liberally.

CHAPTER 183

(H. B. 2868—By Delegate Farley)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article two of said chapter; to amend and reenact section two-a, article seven, chapter six of said code; to amend and reenact section five, article two, chapter fifteen of said code; to amend and reenact section three, article one, chapter twenty-four of said code; to amend and reenact section ten-a, article one, chapter fifty-one of said code; and to amend and

reenact section thirteen, article two of said chapter fifty-one, all relating to salaries of certain state officers, judges and justices; setting the salaries of secretaries of departments; increasing the salaries of certain state officers; setting the salaries of certain other state appointed officers and employees; setting effective dates and providing for phase-in of certain salary increases; providing for filing sworn statement by certain state appointive officers as to compensation of their employees; making terms of public service commissioners at will and pleasure of governor; increasing salaries of members of department of public safety and providing effective date; increasing salaries of circuit court judges and supreme court justices and providing effective dates thereof.

Be it enacted by the Legislature of West Virginia:

That section three, article one, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three, article two of said chapter be amended and reenacted; that section two-a, article seven, chapter six of said code be amended and reenacted; that section five, article two, chapter fifteen of said code be amended and reenacted; that section three, article one, chapter twenty-four of said code be amended and reenacted; that section ten-a, article one, chapter fifty-one of said code be amended and reenacted; and that section thirteen, article two of said chapter fifty-one be amended and reenacted, all to read as follows:

Chapter

5F. Reorganization of the Executive Branch of State Government.

- 6. General Provisions Respecting Officers.**
- 15. Public Safety.**
- 24. Public Service Commission.**
- 51. Courts and Their Officers.**

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

Article

- 1. General Provisions.**
- 2. Transfer of Agencies and Boards.**

ARTICLE 1. GENERAL PROVISIONS.**§5F-1-3. Oath; bond; compensation.**

1 (a) Each person appointed to serve as a secretary shall
2 take the oath or affirmation prescribed by section five,
3 article four of the constitution, and such oath shall be
4 certified by the person who administers the same and
5 filed in the office of the secretary of state.

6 (b) Each person so appointed shall give bond in the
7 penalty of twenty-five thousand dollars conditioned for
8 the faithful performance of the duties of the office,
9 which bond shall be approved by the attorney general
10 as to form and by the governor as to sufficiency. The
11 surety of such bond may be a bonding or surety
12 company, in which case the premium shall be paid out
13 of the appropriation made for the administration of the
14 department.

15 (c) Each secretary shall receive a salary of seventy
16 thousand dollars per year.

17 (d) The salary and expenses necessary for each
18 secretary and all expenditures for personal services for
19 the office of secretary shall be paid from and within
20 existing appropriations made to the agencies and boards
21 transferred to the department headed by that secretary,
22 and revised expenditure schedules shall be submitted to
23 the commissioner of finance and administration and the
24 legislative auditor stating the amount and source of
25 funds to be expended: *Provided*, That for fiscal years
26 beginning the first day of July, one thousand nine
27 hundred eighty-nine, such amounts shall follow the
28 procedures described in chapter five-a of this code.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.**§5F-2-3. Administrators; appointment; oath; bond; compensation.**

1 (a) Notwithstanding any other provision of this code
2 (including subsections (h) and (i), section one of this
3 article) to the contrary, each administrator required by
4 other provisions of this code to be appointed by the
5 governor shall:

6 (1) Continue to be appointed by the governor by and
7 with the advice and consent of the Senate and each such
8 administrator shall serve at the will and pleasure of the
9 governor, and the governor may appoint a person to fill
10 more than one such position of administrator and may
11 appoint a secretary to fill one or more positions of such
12 administrator, but each person appointed as such an
13 administrator must possess whatever qualifications are
14 elsewhere specified in this code as being required for
15 appointment to such position;

16 (2) Take the oath of office or affirmation prescribed
17 by section five, article four of the constitution, and such
18 oath shall be certified by the person who administers the
19 same and filed in the office of the secretary of state;

20 (3) Give bond in the penalty of fifteen thousand
21 dollars conditioned for the faithful performance of the
22 duties of the office, which bond shall be approved by the
23 attorney general as to form and by the secretary as to
24 sufficiency. The surety of such bond may be a bonding
25 or surety company, in which case the premium shall be
26 paid out of the appropriation made for the administra-
27 tion of the department; and

28 (4) Receive an annual salary as shall be fixed from
29 time to time by law or as otherwise provided.

30 (b) Each administrator required by other provisions
31 of this code to be appointed in any manner other than
32 by the governor shall continue to be appointed, shall
33 take such oath of office, give such bond and receive such
34 salary as shall be so specified by such other provisions
35 of this code.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

1 (a) Notwithstanding any other provision of this code

2 to the contrary, each of the following appointive state
3 officers named in this subsection shall be appointed by
4 the governor, by and with the advice and consent of the
5 Senate. Each of such appointive state officers shall serve
6 at the will and pleasure of the governor for the term for
7 which the governor was elected and until the respective
8 state officers' successors have been appointed and
9 qualified. Each of such appointive state officers shall
10 hereafter be subject to the existing qualifications for
11 holding each such respective office and each shall have
12 and is hereby granted all of the powers and authority
13 and shall perform all of the functions and services
14 heretofore vested in and performed by virtue of existing
15 law respecting each such office.

16 Beginning on the first day of January, one thousand
17 nine hundred ninety, the annual salary of each such
18 named appointive state officer shall be as follows:

19 Administrator, division of highways, sixty thousand
20 dollars; administrator, division of health, fifty-seven
21 thousand two hundred dollars; administrator, division of
22 human services, forty-seven thousand eight hundred
23 dollars; administrator, state tax division, forty-nine
24 thousand nine hundred dollars; administrator, division
25 of energy, sixty-five thousand dollars; administrator,
26 division of finance and administration, forty-seven
27 thousand eight hundred dollars; administrator, division
28 of corrections, forty-five thousand dollars; administra-
29 tor, division of community and industrial development,
30 sixty-three thousand six hundred dollars; administrator,
31 division of workers' compensation, forty-five thousand
32 dollars; administrator, division of commerce, sixty-two
33 thousand five hundred dollars; administrator, division of
34 natural resources, forty-seven thousand eight hundred
35 dollars; administrator, division of public safety, forty-
36 four thousand six hundred dollars; administrator,
37 lottery division, sixty thousand dollars; director, public
38 employees insurance agency, fifty-five thousand dollars;
39 administrator, division of employment security, forty-
40 five thousand dollars; administrator, division of bank-
41 ing, thirty-eight thousand three hundred dollars;
42 administrator, division of insurance, thirty-six thousand

43 seven hundred dollars; administrator, division of culture
44 and history, thirty-eight thousand three hundred
45 dollars; chairman, public service commission, fifty
46 thousand dollars; members, public service commission,
47 forty-six thousand two hundred dollars; administrator,
48 alcohol beverage control commission, thirty-eight
49 thousand three hundred dollars; administrator, division
50 of motor vehicles, forty thousand dollars; director,
51 division of personnel, thirty-eight thousand three
52 hundred dollars; adjutant general, thirty-five thousand
53 seven hundred dollars; chairman, health care cost
54 review authority, forty thousand dollars; members,
55 health care cost review authority, thirty-six thousand
56 five hundred dollars; director, human rights commis-
57 sion, forty thousand dollars; administrator, division of
58 labor, thirty-five thousand seven hundred dollars;
59 administrator, division of veterans affairs, thirty-two
60 thousand dollars; administrator, division of emergency
61 services, thirty-two thousand dollars; administrator,
62 nonintoxicating beer commission, thirty-two thousand
63 dollars; members, board of probation and parole,
64 twenty-eight thousand three hundred dollars; members,
65 employment security review board, seventeen thousand
66 dollars; members, workers' compensation appeal board,
67 seventeen thousand eight hundred dollars.

68 Prior to the first day of January, one thousand nine
69 hundred ninety, each of the aforesaid officers shall
70 continue to receive the annual salaries they were
71 receiving as of the last day of March, one thousand nine
72 hundred eighty-nine.

73 (b) Notwithstanding any other provisions of this code
74 to the contrary, each of the state officers named in this
75 subsection shall continue to be appointed in the manner
76 prescribed in this code, and shall be paid an annual
77 salary as follows, except that any increase in salary over
78 and above the salary being received by any of the
79 following state officers as of the last day of March, one
80 thousand nine hundred eighty-nine, shall not become
81 effective until the first day of January, one thousand
82 nine hundred ninety:

83 Chancellor, board of regents, seventy thousand

84 dollars; state superintendent of schools, seventy thou-
85 sand dollars; administrator, division of risk and insu-
86 rance management, forty-two thousand dollars; director,
87 division of rehabilitation services, fifty-five thousand
88 dollars; executive director, educational broadcasting
89 authority, forty-seven thousand five hundred dollars;
90 secretary, library commission, forty-seven thousand five
91 hundred dollars; director, geologic and economic survey,
92 forty-seven thousand five hundred dollars; executive
93 director, water development authority, fifty-four thou-
94 sand two hundred dollars; executive secretary, teacher's
95 retirement system, forty-seven thousand two hundred
96 dollars; executive secretary, public employees retire-
97 ment system, forty thousand one hundred dollars;
98 director, air pollution control commission, forty-four
99 thousand eight hundred dollars; executive director,
100 public legal services council, forty seven thousand five
101 hundred dollars; director, commission on aging, forty
102 thousand dollars; commissioner, oil and gas conservation
103 commission, forty thousand dollars; director, farm
104 management commission, thirty-two thousand five
105 hundred dollars; state fire administrator, twenty-five
106 thousand two hundred dollars; executive secretary,
107 municipal bond commission, thirty thousand two
108 hundred dollars; director, railroad maintenance author-
109 ity, thirty-two thousand five hundred dollars; executive
110 secretary, women's commission, thirty thousand one
111 hundred dollars; executive director, regional jail
112 authority, forty-two thousand six hundred dollars;
113 director, hospital finance authority, twenty-five thou-
114 sand eight hundred dollars.

115 (c) No increase in the salary of any appointive state
116 officer pursuant to this section shall be paid until and
117 unless such appointive state officer shall have first filed
118 with the state auditor and the legislative auditor a
119 sworn statement, on a form to be prescribed by the
120 attorney general, certifying that such spending unit is
121 in compliance with any general law providing for a
122 salary increase for his employees. The attorney general
123 shall prepare and distribute such form to the affected
124 spending units: *Provided*, That no decrease in salary
125 shall be effective for any current appointive state officer

126 appointed prior to the first day of January, one thousand
127 nine hundred eighty-nine: *Provided, however,* That such
128 decreases shall take effect at such time as any appoin-
129 tive office is vacated.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-5. Salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

1 Members of the department shall receive annual
2 salaries pursuant to appropriation by the Legislature,
3 payable at least monthly as follows:

4 Any lieutenant colonel shall receive an annual salary
5 of thirty-three thousand six hundred seventy-two
6 dollars; any major shall receive an annual salary of
7 thirty-one thousand fifty-six dollars; any captain shall
8 receive an annual salary of twenty-eight thousand nine
9 hundred forty-four dollars; any first lieutenant shall
10 receive an annual salary of twenty-seven thousand three
11 hundred seventy-two dollars; any second lieutenant shall
12 receive an annual salary of twenty-five thousand eight
13 hundred dollars; any master sergeant or first sergeant
14 shall receive an annual salary of twenty-four thousand
15 two hundred twenty-eight dollars; any sergeant shall
16 receive an annual salary of twenty-two thousand six
17 hundred fifty-six dollars; any corporal shall receive an
18 annual salary of twenty-one thousand seventy-two
19 dollars; any trooper first class shall receive an annual
20 salary of nineteen thousand five hundred dollars; and
21 any newly enlisted trooper shall receive a salary of one
22 thousand four hundred five dollars monthly during the
23 period of his basic training, and upon the satisfactory
24 completion of such training and assignment to active
25 duty, each such trooper shall receive, during the
26 remainder of his first year's service, a salary of one
27 thousand five hundred fourteen dollars monthly. During
28 the second year of his service in the department, each
29 trooper shall receive an annual salary of eighteen
30 thousand five hundred fifty-two dollars; during the third

31 year of his service each such trooper shall receive an
32 annual salary of eighteen thousand eight hundred fifty-
33 two dollars; and during the fourth and fifth year of such
34 trooper's service and for each year thereafter, he shall
35 receive an annual salary of nineteen thousand ninety-
36 two dollars: *Provided*, That effective on the first day of
37 January, one thousand nine hundred ninety, any
38 lieutenant colonel shall receive an annual salary of
39 thirty-five thousand three hundred fifty-two dollars; any
40 major shall receive an annual salary of thirty-two
41 thousand six hundred four dollars; any captain shall
42 receive an annual salary of thirty thousand three
43 hundred ninety-six dollars; any first lieutenant shall
44 receive an annual salary of twenty-eight thousand seven
45 hundred forty dollars; any second lieutenant shall
46 receive an annual salary of twenty-seven thousand
47 ninety-six dollars; any master sergeant or first sergeant
48 shall receive an annual salary of twenty-five thousand
49 four hundred forty dollars; any sergeant shall receive an
50 annual salary of twenty-three thousand seven hundred
51 eighty-four dollars; any corporal shall receive an annual
52 salary of twenty-two thousand one hundred twenty-eight
53 dollars; any trooper first class shall receive an annual
54 salary of twenty thousand four hundred seventy-two
55 dollars; and any newly enlisted trooper shall receive a
56 salary of one thousand four hundred seventy-five dollars
57 monthly during the period of his basic training, and
58 upon the satisfactory completion of such training and
59 assignment to active duty, each such trooper shall
60 receive, during the remainder of his first year's service,
61 a salary of one thousand five hundred ninety dollars
62 monthly. During the second year of his service in the
63 department, each trooper shall receive an annual salary
64 of nineteen thousand four hundred seventy-six dollars;
65 during the third year of his service each such trooper
66 shall receive an annual salary of nineteen thousand eight
67 hundred dollars; and during the fourth and fifth year
68 of such trooper's service and for each year thereafter,
69 he shall receive an annual salary of twenty thousand
70 fifty-two dollars.

71 Each member of the department whose salary is fixed
72 and specified herein shall receive and be entitled to an

73 increase in salary over that hereinbefore set forth, for
74 grade in rank, based on length of service, including that
75 heretofore and hereafter served with the department as
76 follows: At the end of five years of service with the
77 department, such member shall receive a salary
78 increase of three hundred dollars to be effective during
79 his next three years of service and a like increase at
80 three-year intervals thereafter, with such increases to be
81 cumulative.

82 In applying the foregoing salary schedule where
83 salary increases are provided for length of service,
84 members of the department in service at the time this
85 article becomes effective shall be given credit for prior
86 service and shall be paid such salaries as the same
87 length of service will entitle them to receive under the
88 provisions hereof.

89 The Legislature finds and declares that there is
90 litigation pending in the circuit court of Kanawha
91 County on the question whether members of the
92 department of public safety are covered by the provi-
93 sions of the state wage and hour law, article five-c,
94 chapter twenty-one of this code. The Legislature further
95 finds and declares that because of the unique duties of
96 members of the department, it is not appropriate to
97 apply said wage and hour provisions to them. Accord-
98 ingly, members of the department of public safety are
99 hereby excluded from the provisions of said wage and
100 hour law. The express exclusion hereby enacted shall
101 not be construed as any indication that such members
102 were or were not heretofore covered by said wage and
103 hour law.

104 In lieu of any overtime pay they might otherwise have
105 received under the wage and hour law, and in addition
106 to their salaries and increases for length of service,
107 members who have completed basic training may
108 receive supplemental pay as hereinafter provided.

109 The superintendent shall, within thirty days after the
110 effective date hereof, promulgate a rule or regulation to
111 establish the number of hours per month which shall
112 constitute the standard work month for the members of

113 the department. Such rule or regulation shall further
114 establish, on a graduated hourly basis, the criteria for
115 receipt of a portion or all of such supplemental payment
116 when hours are worked in excess of said standard work
117 month. Such rule or regulation shall be promulgated
118 pursuant to the provisions of chapter twenty-nine-a of
119 this code. The superintendent shall certify monthly to
120 the department's payroll officer the names of those
121 members who have worked in excess of the standard
122 work month and the amount of their entitlement to
123 supplemental payment.

124 The supplemental payment shall be in an amount
125 equal to one and one-half percent of the annual salary
126 of a trooper during his second year of service, not to
127 exceed two hundred twenty-five dollars monthly:
128 *Provided*, That effective the first day of January, one
129 thousand nine hundred ninety, said supplemental
130 payment may be up to but not exceeding two hundred
131 thirty-six dollars monthly. The superintendent and
132 civilian employees of the department shall not be
133 eligible for any such supplemental payments.

134 Each member of the department, except the superin-
135 tendent and civilian employees, shall execute, before
136 entering upon the discharge of his duties, a bond with
137 security in the sum of five thousand dollars payable to
138 the state of West Virginia, conditioned upon the faithful
139 performance of his duties, and such bond shall be
140 approved as to form by the attorney general and to
141 sufficiency by the governor.

142 Any member of the department who is called to
143 perform active duty for training or inactive duty
144 training in the national guard or any reserve component
145 of the armed forces of the United States annually shall
146 be granted upon request leave time not to exceed thirty
147 calendar days for the purpose of performing such active
148 duty for training or inactive duty training, and the time
149 so granted shall not be deducted from any leave
150 accumulated as a member of the department.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman; compensation.

1 (a) The public service commission of West Virginia,
2 heretofore established, is continued and directed as
3 provided by this chapter, chapter twenty-four-a and
4 chapter twenty-four-b. In addition, after having con-
5 ducted a performance audit through its joint committee
6 on government operations, pursuant to section nine,
7 article ten, chapter four of this code, the Legislature
8 hereby finds and declares that the public service
9 commission should be continued and reestablished.
10 Accordingly, notwithstanding the provisions of section
11 four, article ten, chapter four of this code, the public
12 service commission shall continue to exist until the first
13 day of July, one thousand nine hundred ninety-two. The
14 public service commission may sue and be sued by that
15 name. Such public service commission shall consist of
16 three members who shall be appointed by the governor
17 with the advice and consent of the Senate. The commis-
18 sioners shall be citizens and residents of this state and
19 at least one of them shall be duly licensed to practice
20 law in West Virginia, of not less than ten years' actual
21 experience at the bar. No more than two of said
22 commissioners shall be members of the same political
23 party. Each commissioner shall, before entering upon
24 the duties of his office, take and subscribe to the oath
25 provided by section five, article four of the constitution,
26 which oath shall be filed in the office of the secretary
27 of state. The governor shall designate one of the
28 commissioners to serve as chairman at the governor's
29 will and pleasure. The chairman shall be the chief
30 administrative officer of the commission. The governor
31 may remove any commissioner only for incompetency,
32 neglect of duty, gross immorality, malfeasance in office
33 or violation of subsection (c) of this section.

34 (b) The unexpired term of members of the public
35 service commission at the time this subsection becomes
36 effective are continued through the thirtieth day of
37 June, one thousand nine hundred seventy-nine. In
38 accordance with the provisions of subsection (a) of this
39 section, the governor shall appoint three commissioners,

40 one for a term of two years, one for a term of four years
41 and one for a term of six years, all the terms beginning
42 on the first day of July, one thousand nine hundred
43 seventy-nine. All future appointments are for terms of
44 six years, except that an appointment to fill a vacancy
45 is for the unexpired term only. The commissioners
46 whose terms are terminated by the provisions of this
47 subsection are eligible for reappointment.

48 (c) No person while in the employ of, or holding any
49 official relation to, any public utility subject to the
50 provisions of this chapter, or holding any stocks or bonds
51 thereof, or who is pecuniarily interested therein, may
52 serve as a member of the commission or as an employee
53 thereof. Nor may any such commissioner be a candidate
54 for or hold public office, or be a member of any political
55 committee, while acting as such commissioner; nor may
56 any commissioner or employee of said commission
57 receive any pass, free transportation or other thing of
58 value, either directly or indirectly, from any public
59 utility or motor carrier subject to the provisions of this
60 chapter. In case any of the commissioners becomes a
61 candidate for any public office or a member of any
62 political committee, the governor shall remove him from
63 office and shall appoint a new commissioner to fill the
64 vacancy created.

65 (d) Effective the first day of July, one thousand nine
66 hundred eighty-four, and in light of the assignment of
67 new, substantial additional duties embracing new areas
68 and fields of activity under certain legislative enact-
69 ments, each commissioner shall receive a salary of
70 thirty-nine thousand two hundred forty dollars a year
71 to be paid in monthly installments from the special
72 funds in such amounts as follows:

73 (1) From the public service commission fund collected
74 under the provisions of section six, article three of this
75 chapter, thirty thousand two hundred ten dollars;

76 (2) From the public service commission motor carrier
77 fund collected under the provisions of section six, article
78 six, chapter twenty-four-a of this code, seven thousand
79 five hundred twenty-five dollars; and

80 (3) From the public service commission gas pipeline
81 safety fund collected under the provisions of section
82 three, article five, chapter twenty-four-b of this code,
83 one thousand five hundred five dollars.

84 In addition to this salary provided for all commission-
85 ers, the chairman of the commission shall receive three
86 thousand five hundred dollars a year to be paid in
87 monthly installments from the public service commis-
88 sion fund collected under the provisions of section six,
89 article three of this chapter, on and after the first day
90 of July, one thousand nine hundred eighty-four.

91 (e) Effective the first day of July, one thousand nine
92 hundred eighty-five, and in light of the assignment of
93 new, substantial additional duties embracing new areas
94 and fields of activity under certain legislative enact-
95 ments, each commissioner shall receive a salary of forty-
96 one thousand dollars a year to be paid in monthly
97 installments from the special funds in such amounts as
98 follows:

99 (1) From the public service commission fund collected
100 under the provisions of section six, article three of this
101 chapter, thirty-one thousand six hundred dollars;

102 (2) From the public service commission motor carrier
103 fund collected under the provisions of section six, article
104 six, chapter twenty-four-a of this code, seven thousand
105 nine hundred dollars; and

106 (3) From the public service commission gas pipeline
107 safety fund collected under the provisions of section
108 three, article five, chapter twenty-four-b of this code,
109 one thousand five hundred dollars.

110 In addition to this salary provided for all commission-
111 ers, the chairman of the commission shall receive three
112 thousand six hundred seventy-five dollars a year to be
113 paid in monthly installments from the public service
114 commission fund collected under the provisions of
115 section six, article three of this chapter, on and after the
116 first day of July, one thousand nine hundred eighty-five.

117 (f) Effective the first day of July, one thousand nine
118 hundred eighty-eight, and in light of the assignment of

119 new, substantial additional duties embracing new areas
120 and fields of activity under certain legislative enact-
121 ments, each commissioner shall receive a salary of forty-
122 four thousand dollars a year to be paid in monthly
123 installments from the special funds in such amounts as
124 follows:

125 (1) From the public service commission fund collected
126 under the provisions of section six, article three of this
127 chapter, thirty-three thousand nine hundred dollars;

128 (2) From the public service commission motor carrier
129 fund collected under the provisions of section six, article
130 six, chapter twenty-four-a of this code, eight thousand
131 five hundred dollars; and

132 (3) From the public service commission gas pipeline
133 safety fund collected under the provisions of section
134 three, article five, chapter twenty-four-b of this code,
135 one thousand six hundred dollars.

136 In addition to this salary provided for all commission-
137 ers, the chairman of the commission shall receive three
138 thousand six hundred seventy-five dollars a year to be
139 paid in monthly installments from the public service
140 commission fund collected under the provisions of
141 section six, article three of this chapter, on and after the
142 first day of July, one thousand nine hundred eighty-
143 eight.

144 (g) Effective the first day of January, one thousand
145 nine hundred ninety, each commissioner shall receive
146 the salary set forth in section two-a, article seven,
147 chapter six of this code to be paid in monthly instal-
148 lments from the special funds in such amounts as
149 follows:

150 (1) From the public service commission fund collected
151 under the provisions of section six, article three of this
152 chapter, thirty-five thousand five hundred ninety-five
153 dollars;

154 (2) From the public service commission motor carrier
155 fund collected under the provisions of section six, article
156 six, chapter twenty-four-a of this code, eight thousand
157 nine hundred twenty-five dollars; and

158 (3) From the public service commission gas pipeline
159 safety fund collected under the provisions of section
160 three, article five, chapter twenty-four-b of this code,
161 one thousand six hundred eighty dollars.

162 In addition to this salary provided for all commission-
163 ers, the chairman of the commission shall receive three
164 thousand eight hundred dollars a year to be paid in
165 monthly installments from the public service commis-
166 sion fund collected under the provisions of section six,
167 article three of this chapter, on and after the first day
168 of January, one thousand nine hundred ninety.

CHAPTER 51. COURTS AND THEIR OFFICERS.

Article

1. Supreme Court of Appeals.
2. Circuit Courts; Circuit Judges.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-10a. Salary of justices.

1 The salary of each of the justices of the supreme court
2 of appeals shall be fifty-five thousand dollars per year:
3 *Provided*, That beginning the first day of January, one
4 thousand nine hundred ninety, the salary of each of the
5 justices of the supreme court shall be seventy-two
6 thousand dollars per year.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-13. Salaries of judges of circuit courts.

1 The salaries of the judges of the various circuit courts
2 shall be paid solely out of the state treasury. No county,
3 county commission, board of commissioners or other
4 political subdivision shall supplement or add to such
5 salaries.

6 The annual salary of all circuit judges shall be fifty
7 thousand dollars per year: *Provided*, That beginning the
8 first day of January, one thousand nine hundred ninety,
9 the annual salary of all circuit judges shall be sixty-five
10 thousand dollars per year.

CHAPTER 184

(Com. Sub. for S. B. 301—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four, article twenty-six, chapter sixteen of said code; to amend and reenact sections one, two and eight, article nine, chapter twenty of said code; to further amend said article nine by adding thereto four new sections, designated sections five-a, twelve-a, twelve-b and twelve-c; to further amend said chapter twenty by adding thereto two new articles, designated articles ten and eleven; to amend and reenact sections one and four-b, article two, chapter twenty-four of said code; to amend article two of said chapter twenty-four by adding thereto a new section, designated section one-f; and to amend article two, chapter twenty-four-a by adding thereto a new section, designated section four-a, all relating to solid and hazardous waste disposal generally; county solid waste assessment fees authorized; establishing the West Virginia solid waste management board; short title; definitions; redesignation of West Virginia resource recovery—solid waste disposal authority as the West Virginia solid waste management board; organization; appointment; qualifications; terms of office; compensation and expenses; director; designation and establishment of disposal sheds; construction and maintenance of disposal projects; loans; compliance with state and federal law; powers, duties, and responsibilities of board; power of board to collect service charges; exercise of other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights; development and designation of solid waste disposal

sheds by the board; funds and use of health department employees for study and engineering of proposed projects; records to be kept; repayment to department; solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance; trustee for bondholders; contents of trust agreement; remedies of bondholders and trustees; bonds and notes not a debt of state, county, municipality or any political subdivision; expenses incurred pursuant to article; use of funds and properties by board; restrictions thereon; investment of funds by board; rentals, fees, service charges, and other revenues from solid waste disposal projects; contracts and leases of board; cooperation of other governmental agencies; bonds of such agencies; maintenance, operation, and repair of projects; repair of damaged property; reports by board to governor and Legislature; exemption from taxation; governmental agencies authorized to convey property; gratuities and financial interest in contracts and projects prohibited; penalties; conduct of proceedings of board; regulation of solid waste collectors and haulers to continue under public service commission; bringing about their compliance with solid waste disposal shed plan and solid waste disposal projects; testimony at commission hearings; cooperation of board and enforcement agencies in the collection and disposal of abandoned appliances and motor vehicles; findings and purposes; definitions; election by county commission to assume powers and duties of the county solid waste authority; assistance to county or regional solid waste authorities; commercial solid waste facilities siting plan; facilities subject to plan; criteria; approval by West Virginia solid waste management board; effect on facilities siting; public hearings; rules and regulations; interim siting approval for commercial solid waste facilities; solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties; creation of commercial hazardous waste management siting board; purpose and legislative findings; definitions; establishment of commercial hazardous waste management facility siting board; composition; appointment; compensation; powers; rules

and procedures; effect of certification; commercial hazardous waste management facility siting fund created; fees; judicial review; remedies; short title; West Virginia recycling program; short title; findings and purpose; recycling goals; recycling plans; establishment of county recycling programs for solid waste; petition for referendum and ballot form; referendum election procedure; effect of election; establishment of state recycling programs for solid waste; procurement of recycled products; jurisdiction of commission; waiver of jurisdiction; jurisdiction of public service commission with respect to solid waste facilities; procedures for changing rates of electric, natural gas, telephone cooperatives and municipally operated public utilities; motor carrier transporting solid waste; and pass through of landfill tip fee as rate surcharge.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four of article twenty-six, chapter sixteen of said code be amended and reenacted; that sections one, two and eight, article nine, chapter twenty of said code be amended and reenacted; that article nine of said chapter be further amended by adding thereto four new sections, designated sections five-a, twelve-a, twelve-b and twelve-c; that said chapter twenty be further amended by adding thereto two new articles, designated articles ten and eleven; that sections one and four-b, article two, chapter twenty-four of said code be amended and reenacted; that article two of said chapter twenty-four be further amended by adding thereto a new section, designated section one-f; and that article two, chapter twenty-four-a be amended by adding thereto a new section, designated section four-a, all to read as follows:

Chapter

- 7. County Commissions and Officers.**
- 16. Public Health.**
- 20. Natural Resources.**

24. Public Service Commission.**24A. Motor Carriers of Passengers and Property for Hire.****CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.****ARTICLE 5. FISCAL AFFAIRS.****§7-5-22. County solid waste assessment fees authorized.**

1 Each county commission is hereby authorized to
2 impose a similar solid waste assessment fee to that
3 imposed by section five, article five-f, chapter twenty of
4 this code at a rate not to exceed fifty cents per ton or
5 part thereof upon the disposal of solid waste in that
6 county: *Provided*, That in counties wherein one or more
7 municipalities operate their own solid waste collection
8 programs and solid waste disposal facilities, such
9 municipality or municipalities shall receive one half of
10 the assessments collected under this section. Such
11 amount shall be divided pro-rata amongst said munic-
12 ipalities and shall be deposited in their general revenue
13 fund. All assessments due the county shall be applied
14 to the reasonable costs of administration of that county's
15 regional or county solid waste authority including the
16 necessary and reasonable expenses of its members.

CHAPTER 16. PUBLIC HEALTH.**ARTICLE 26. WEST VIRGINIA SOLID WASTE MANAGEMENT BOARD.**

§16-26-1. Short title.

§16-26-3. Definitions.

§16-26-4. West Virginia resource recovery—solid waste disposal authority redesignated West Virginia solid waste management board; organization of board; appointment and qualification of board members; their term of office, compensation and expenses; director of board.

§16-26-5. Board to designate and establish disposal sheds; construction, maintenance, etc., of disposal projects; loan agreements; compliance with federal and state law.

§16-26-6. Powers, duties and responsibilities of board generally.

§16-26-7. Power of board to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.

§16-26-8. Development and designation of solid waste disposal sheds by boards.

- §16-26-9. Expenditure of funds and use of health department employees for study and engineering of proposed projects; records to be kept; repayment to department.
- §16-26-10. Board empowered to issue solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.
- §16-26-11. Trustee for bondholders; contents of trust agreement.
- §16-26-12. Legal remedies of bondholders and trustees.
- §16-26-13. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.
- §16-26-14. Use of funds, properties, etc., by board; restrictions thereon.
- §16-26-15. Investment of funds by board.
- §16-26-16. Rentals, fees, service charges and other revenues from solid waste disposal projects; contracts and leases of board; cooperation of other governmental agencies; bonds of such agencies.
- §16-26-17. Maintenance, operation and repair of projects; repair of damaged property; reports by board to governor and Legislature.
- §16-26-19. Exemption from taxation.
- §16-26-20. Governmental agencies authorized to convey property.
- §16-26-21. Financial interest in contracts; projects, etc., prohibited; gratuities prohibited; penalty.
- §16-26-22. Conduct of proceedings of board.
- §16-26-23. Regulation of solid waste collectors and haulers to continue under public service commission; bringing about their compliance with solid waste disposal shed plan and solid waste disposal projects; giving testimony at commission hearings.
- §16-26-24. Cooperation of board and enforcement agencies in collecting and disposing of abandoned household appliances and motor vehicles, etc.

§16-26-1. Short title.

- 1 This article shall be known and cited as the “West
- 2 Virginia Solid Waste Management Board Act.”

§16-26-3. Definitions.

- 1 As used in this article, unless the context clearly
- 2 requires a different meaning:

- 3 (1) “Board” means the West Virginia solid waste
- 4 management board created in section four of this
- 5 article, heretofore known as the West Virginia state
- 6 solid waste authority, the duties, powers, responsibilities
- 7 and functions of which are specified in this article. All
- 8 references in this code to the West Virginia resource
- 9 recovery—solid waste disposal authority shall be
- 10 construed as references to the West Virginia solid waste
- 11 management board.

12 (2) "Bond" or "solid waste disposal revenue bond"
13 means a revenue bond or note issued by the West
14 Virginia solid waste management board, heretofore
15 known as the West Virginia resource recovery—solid
16 waste disposal authority, to effect the intents and
17 purposes of this article.

18 (3) "Construction" includes reconstruction, enlarge-
19 ment, improvement and providing furnishings or
20 equipment for a solid waste disposal project.

21 (4) "Cost" means, as applied to solid waste disposal
22 projects, the cost of their acquisition and construction;
23 the cost of acquisition of all land, rights-of-way,
24 property, rights, easements, franchise rights and
25 interests required by the board for such acquisition and
26 construction; the cost of demolishing or removing any
27 buildings or structures on land so acquired, including
28 the cost of acquiring any land to which such buildings
29 or structures may be moved; the cost of diverting
30 highways, interchange of highways and access roads to
31 private property, including the cost of land or easements
32 therefor; the cost of all machinery, furnishings and
33 equipment; all financing charges and interest prior to
34 and during construction and for no more than eighteen
35 months after completion of construction; the cost of all
36 engineering services and all expenses of research and
37 development with respect to solid waste disposal
38 facilities; the cost of all legal services and expenses; the
39 cost of all plans, specifications, surveys and estimates of
40 cost and revenues; all working capital and other
41 expenses necessary or incident to determining the
42 feasibility or practicability of acquiring or constructing
43 any such project; all administrative expenses and such
44 other expenses as may be necessary or incident to the
45 acquisition or construction of the project; the financing
46 of such acquisition or construction, including the
47 amount authorized in the resolution of the board
48 providing for the issuance of solid waste disposal
49 revenue bonds to be paid into any special funds from the
50 proceeds of such bonds; and the financing of the placing
51 of any such project in operation. Any obligation or
52 expenses incurred after the effective date of this article

53 by any governmental agency, with the approval of the
54 board, for surveys, borings, preparation of plans and
55 specifications and other engineering services in connec-
56 tion with the acquisition or construction of a project
57 shall be regarded as a part of the cost of such project
58 and shall be reimbursed out of the proceeds of loans or
59 solid waste disposal revenue bonds as authorized by the
60 provisions of this article.

61 (5) "Governmental agency" means the state govern-
62 ment or any agency, department, division or unit
63 thereof; counties; municipalities; watershed improve-
64 ment districts; soil conservation districts; sanitary
65 districts; public service districts; drainage districts;
66 regional governmental authorities and any other
67 governmental agency, entity, political subdivision,
68 public corporation or agency having the authority to
69 acquire, construct or operate solid waste disposal
70 facilities; the United States government or any agency,
71 department, division or unit thereof; and any agency,
72 commission or authority established pursuant to an
73 interstate compact or agreement.

74 (6) "Industrial waste" means any solid waste sub-
75 stance resulting from or incidental to any process of
76 industry, manufacturing, trade or business, or from or
77 incidental to the development, processing or recovery of
78 any natural resource.

79 (7) "Owner" includes all persons, partnerships or
80 governmental agencies having any title or interest in
81 any property rights, easements and interests authorized
82 to be acquired by this article.

83 (8) "Person" means any public or private corporation,
84 institution, association, firm or company organized or
85 existing under the laws of this or any other state or
86 country; the United States or the state of West Virginia;
87 governmental agency; political subdivision; county
88 commission; municipality; industry; sanitary district;
89 public service district; drainage district; soil conserva-
90 tion district; solid waste disposal shed district; partner-
91 ship; trust; estate; individual; group of individuals

92 acting individually or as a group; or any other legal
93 entity whatever.

94 (9) "Pollution" means the discharge, release, escape or
95 deposit, directly or indirectly, of solid waste of whatever
96 kind or character, on lands or in waters in the state in
97 an uncontrolled, unregulated or unapproved manner.

98 (10) "Revenue" means any money or thing of value
99 collected by, or paid to, the West Virginia solid waste
100 management board as rent, use fee, service charge or
101 other charge for use of, or in connection with, any solid
102 waste disposal project, or as principal of or interest,
103 charges or other fees on loans, or any other collections
104 on loans made by the West Virginia solid waste
105 management board to governmental agencies to finance
106 in whole or in part the acquisition or construction of any
107 solid waste development project or projects, or other
108 money or property which is received and may be
109 expended for or pledged as revenues pursuant to this
110 article.

111 (11) "Solid waste" means all putrescible and nonpu-
112 trescible solid waste substances, except human excreta,
113 including, but not limited to, garbage, rubbish, ashes,
114 incinerator residue, street refuse, dead animals, demo-
115 lition and construction waste, vehicles and parts thereof,
116 tires, appliances, sewage plant sludge, commercial and
117 industrial waste and special waste, including, but not
118 limited to, explosives, pathological waste and radioac-
119 tive material, except those commercial and industrial
120 wastes and special wastes which are under the control
121 of the department of natural resources, the department
122 of energy or the West Virginia air pollution control
123 commission, or both, or of the United States
124 government.

125 (12) "Solid waste disposal facility" means any method,
126 system or facility to collect, transport, treat, neutralize,
127 dispose of, stabilize, segregate, recover, recycle or hold
128 solid waste, including, without limiting, the generality
129 of the foregoing, the equipment, furnishings and
130 appurtenances thereof.

131 (13) "Solid waste disposal project" or "project" means

132 any solid waste disposal facility the acquisition or
133 construction of which is authorized by the West Virginia
134 solid waste management board or any acquisition or
135 construction which is financed in whole or in part from
136 funds made available by grant or loan by, or through,
137 the board as provided in this article, including all
138 buildings and facilities which the board deems neces-
139 sary for the operation of the project, together with all
140 property, rights, easements and interests which may be
141 required for the operation of the project.

142 (14) "Solid waste disposal shed" or "shed" means a
143 geographical area which the West Virginia solid waste
144 management board designates as provided in section
145 eight of this article for solid waste management.

§16-26-4. West Virginia resource recovery—solid waste disposal authority redesignated West Virginia solid waste management board; organization of board; appointment and qualification of board members; their term of office, compensation and expenses; director of board.

1 The West Virginia resource recovery—solid waste
2 disposal authority is hereby continued in all respects as
3 heretofore constituted but is hereafter designated and
4 shall be known as the West Virginia solid waste
5 management board. All references in this code to the
6 West Virginia resource recovery—solid waste disposal
7 authority shall be construed as references to the West
8 Virginia solid waste management board. The board is
9 a governmental instrumentality of the state and a body
10 corporate. The exercise by the board of the powers
11 conferred on it by this article and the carrying out of
12 its purposes and duties are essential governmental
13 functions and are for a public purpose.

14 The board shall be composed of seven members. The
15 director of the department of health and the director of
16 the department of natural resources, or their designees,
17 shall be members ex officio of the board. The other five
18 members of the board shall be appointed by the
19 governor, on the effective date of this section, by and

20 with the advice and consent of the Senate, for terms of
21 one, two, three, four and five years, respectively. Two
22 appointees shall be persons having at least three years
23 of professional experience in solid waste management,
24 civil engineering or regional planning and three
25 appointees shall be representatives of the general public.
26 The successor of each such appointed member shall be
27 appointed for a term of five years in the same manner
28 the original appointments were made and so that the
29 representation on the board as set forth in this section
30 is preserved, except that any person appointed to fill a
31 vacancy occurring prior to the expiration of the term for
32 which his predecessor was appointed shall be appointed
33 only for the remainder of such term. Each board
34 member shall serve until the appointment and qualifi-
35 cation of his successor.

36 No more than three of the appointed board members
37 may at any one time be from the same congressional
38 district or belong to the same political party. No
39 appointed board member may be an officer or employee
40 of the United States or this state. Appointed board
41 members may be reappointed to serve additional terms.
42 All members of the board shall be citizens of the state.
43 Each appointed member of the board, before entering
44 upon his duties, shall comply with the requirements of
45 article one, chapter six of this code and give bond in the
46 sum of twenty-five thousand dollars. Appointed
47 members may be removed from the board only for the
48 same causes as elective state officers may be removed.

49 Annually the board shall elect one of its appointed
50 members as chairman, another as vice chairman and
51 appoint a secretary-treasurer, who need not be a
52 member of the board. Four members of the board shall
53 constitute a quorum and the affirmative vote of four
54 members shall be necessary for any action taken by vote
55 of the board. No vacancy in the membership of the
56 board shall impair the rights of a quorum by such vote
57 to exercise all the rights and perform all the duties of
58 the board. The person appointed as secretary-treasurer
59 shall give bond in the sum of fifty thousand dollars. If
60 a board member is appointed as secretary-treasurer, he

61 shall give bond in the sum of twenty-five thousand
62 dollars in addition to the bond required in the preceding
63 paragraph.

64 The ex officio members of the board shall not receive
65 any compensation for serving as a board member. Each
66 of the five appointed members of the board shall receive
67 compensation of fifty dollars for each day actually spent
68 in attending meetings of the board or in the discharge
69 of his duties as a member of the board, but not to exceed
70 two thousand five hundred dollars in any fiscal year.
71 Each of the seven board members shall be reimbursed
72 for all reasonable and necessary expenses actually
73 incurred in the performance of his duties as a member
74 of the board. All such compensation and expenses
75 incurred by board members shall be payable solely from
76 funds of the board or from funds appropriated for such
77 purpose by the Legislature and no liability or obligation
78 shall be incurred by the board beyond the extent to
79 which moneys are available from funds of the board or
80 from such appropriation.

81 The board shall meet at least four times annually and
82 at any time upon the call of its chairman or upon the
83 request in writing to the chairman of four board
84 members.

85 The board shall appoint a director as its chief
86 executive officer. The director shall have successfully
87 completed an undergraduate education and, in addition,
88 shall have two years of professional experience in solid
89 waste management, civil engineering, public adminis-
90 tration or regional planning.

**§16-26-5. Board to designate and establish disposal sheds;
construction, maintenance, etc., of disposal
projects; loan agreements; compliance with
federal and state law.**

1 To accomplish the public policy and purpose and to
2 meet the responsibility of the state as set forth in this
3 article, the West Virginia solid waste management
4 board shall designate and establish solid waste disposal
5 sheds and it may initiate, acquire, construct, maintain,
6 repair and operate solid waste disposal projects or cause

7 the same to be operated pursuant to a lease, sublease or
8 agreement with any person or governmental agency;
9 may make loans and grants to persons and to govern-
10 mental agencies for the acquisition or construction of
11 solid waste disposal projects by such persons and
12 governmental agencies; and may issue solid waste
13 disposal revenue bonds of this state, payable solely from
14 revenues, to pay the cost of, or finance, in whole or in
15 part, by loans to governmental agencies, such projects.
16 A solid waste disposal project shall not be undertaken
17 unless the board determines that the project is consist-
18 ent with federal law, with its solid waste disposal shed
19 plan, with the standards set by the state water resources
20 board and the division of water resources of the
21 department of natural resources for any waters of the
22 state which may be affected thereby, with the air
23 quality standards set by the West Virginia air pollution
24 control commission and with health standards set by the
25 department of health. Any resolution of the board
26 providing for acquiring or constructing such projects or
27 for making a loan or grant for such projects shall
28 include a finding by the board that such determinations
29 have been made. A loan agreement shall be entered into
30 between the board and each governmental agency to
31 which a loan is made for the acquisition or construction
32 of a solid waste disposal project, which loan agreement
33 shall include, without limitation, the following provisions:

34 (1) The cost of such project, the amount of the loan,
35 the terms of repayment of such loan and the security
36 therefor, which may include, in addition to the pledge
37 of all revenues from such project after a reasonable
38 allowance for operation and maintenance expenses, a
39 deed of trust or other appropriate security instrument
40 creating a lien on such project;

41 (2) The specific purposes for which the proceeds of the
42 loan shall be expended, the procedures as to the
43 disbursement of loan proceeds and the duties and
44 obligations imposed upon the governmental agency in
45 regard to the construction or acquisition of the project;

46 (3) The agreement of the governmental agency to
47 impose, collect, and, if required to repay the obligations

48 of such governmental agency under the loan agreement,
49 increase service charges from persons using said
50 project, which service charges shall be pledged for the
51 repayment of such loan together with all interest, fees
52 and charges thereon and all other financial obligations
53 of such governmental agency under the loan agreement;
54 and

55 (4) The agreement of the governmental agency to
56 comply with all applicable laws, rules and regulations
57 issued by the board or other state, federal and local
58 bodies in regard to the construction, operation, maintenance
59 and use of the project.

60 The board shall comply with all of the provisions of
61 federal law and of article one of this chapter and any
62 rules and regulations promulgated thereunder which
63 pertain to solid waste collection and disposal.

§16-26-6. Powers, duties and responsibilities of board generally.

1 The West Virginia solid waste management board
2 may exercise all powers necessary or appropriate to
3 carry out and effectuate its corporate purpose. The
4 board may:

5 (1) Adopt, and from time to time, amend and repeal
6 bylaws necessary and proper for the regulation of its
7 affairs and the conduct of its business, and rules and
8 regulations, promulgated pursuant to the provisions of
9 chapter twenty-nine-a of this code, to implement and
10 make effective its powers and duties.

11 (2) Adopt an official seal.

12 (3) Maintain a principal office which shall be in
13 Kanawha County, and, if necessary, regional suboffices
14 at locations properly designated or provided.

15 (4) Sue and be sued in its own name and plead and
16 be impleaded in its own name, and particularly to
17 enforce the obligations and covenants made under
18 sections ten, eleven and sixteen of this article. Any
19 actions against the board shall be brought in the circuit
20 court of Kanawha County.

21 (5) Make loans and grants to persons and to govern-
22 mental agencies for the acquisition or construction of
23 solid waste disposal projects and adopt rules and
24 procedures for making such loans and grants.

25 (6) Acquire, construct, reconstruct, enlarge, improve,
26 furnish, equip, maintain, repair, operate, lease or rent
27 to, or contract for operation by a governmental agency
28 or person, solid waste disposal projects, and, in accor-
29 dance with chapter twenty-nine-a of this code, adopt
30 rules and regulations for the use of such projects.

31 (7) Make available the use or services of any solid
32 waste disposal project to one or more persons, one or
33 more governmental agencies, or any combination
34 thereof.

35 (8) Issue solid waste disposal revenue bonds and notes
36 and solid waste disposal revenue refunding bonds of the
37 state, payable solely from revenues as provided in
38 section nine of this article unless the bonds are refunded
39 by refunding bond, for the purpose of paying all or any
40 part of the cost of or financing by loans to governmental
41 agencies one or more solid waste disposal projects or
42 parts thereof.

43 (9) Acquire by gift or purchase, hold and dispose of
44 real and personal property in the exercise of its powers
45 and the performance of its duties as set forth in this
46 article.

47 (10) Acquire in the name of the state, by purchase or
48 otherwise, on such terms and in such manner as it
49 deems proper, or by the exercise of the right of eminent
50 domain in the manner provided in chapter fifty-four of
51 this code, such public or private lands, or parts thereof
52 or rights therein, rights-of-way, property, rights,
53 easements and interests it deems necessary for carrying
54 out the provisions of this article, but excluding the
55 acquisition by the exercise of the right of eminent
56 domain of any solid waste disposal facility operated
57 under permits issued pursuant to the provisions of
58 article five-f, chapter twenty of this code and owned by
59 any person or governmental agency. This article does
60 not authorize the board to take or disturb property or

61 facilities belonging to any public utility or to a common
62 carrier, which property or facilities are required for the
63 proper and convenient operation of such public utility
64 or common carrier, unless provision is made for the
65 restoration, relocation or duplication of such property or
66 facilities elsewhere at the sole cost of the board.

67 (11) Make and enter into all contracts and agreements
68 and execute all instruments necessary or incidental to
69 the performance of its duties and the execution of its
70 powers. When the cost under any such contract or
71 agreement, other than compensation for personal
72 services, involves an expenditure of more than two
73 thousand dollars, the board shall make a written
74 contract with the lowest responsible bidder after public
75 notice published as a Class II legal advertisement in
76 compliance with the provisions of article three, chapter
77 fifty-nine of this code, the publication area for such
78 publication to be the county wherein the work is to be
79 performed or which is affected by the contract, which
80 notice shall state the general character of the work and
81 the general character of the materials to be furnished,
82 the place where plans and specifications therefor may
83 be examined and the time and place of receiving bids.
84 A contract or lease for the operation of a solid waste
85 disposal project constructed and owned by the board or
86 an agreement for cooperation in the acquisition or
87 construction of a solid waste disposal project pursuant
88 to section sixteen of this article is not subject to the
89 foregoing requirements and the board may enter into
90 such contract or lease or such agreement pursuant to
91 negotiation and upon such terms and conditions and for
92 such period as it finds to be reasonable and proper
93 under the circumstances and in the best interests of
94 proper operation or of efficient acquisition or construc-
95 tion of such project. The board may reject any and all
96 bids. A bond with good and sufficient surety, approved
97 by the board, shall be required of all contractors in an
98 amount equal to at least fifty percent of the contract
99 price, conditioned upon the faithful performance of the
100 contract.

101 (12) Employ managers, superintendents, engineers,

102 accountants, auditors and other employees, and retain or
103 contract with consulting engineers, financial consul-
104 tants, accounting experts, architects, attorneys and such
105 other consultants and independent contractors as are
106 necessary in its judgment to carry out the provisions of
107 this article, and fix the compensation or fees thereof. All
108 expenses thereof shall be payable solely from the
109 proceeds of solid waste disposal revenue bonds or notes
110 issued by the board, from revenues and from funds
111 appropriated for such purpose by the Legislature.

112 (13) Receive and accept from any federal agency,
113 subject to the approval of the governor, grants for or in
114 aid of the construction of any solid waste disposal project
115 or for research and development with respect to solid
116 waste disposal projects and solid waste disposal sheds
117 and receive and accept from any source aid or contri-
118 butions of money, property, labor or other things of
119 value, to be held, used and applied only for the purposes
120 for which such grants and contributions are made.

121 (14) Engage in research and development with
122 respect to solid waste disposal projects and solid waste
123 disposal sheds.

124 (15) Purchase fire and extended coverage and liability
125 insurance for any solid waste disposal project and for
126 the principal office and suboffices of the board, insu-
127 rance protecting the board and its officers and em-
128 ployees against liability, if any, for damage to property
129 or injury to or death of persons arising from its
130 operations and any other insurance the board may agree
131 to provide under any resolution authorizing the issuance
132 of solid waste disposal revenue bonds or in any trust
133 agreement securing the same.

134 (16) Charge, alter and collect rentals and other
135 charges for the use or services of any solid waste
136 disposal project as provided in this article, and charge
137 and collect reasonable interest, fees and other charges
138 in connection with the making and servicing of loans to
139 governmental agencies in furtherance of the purposes of
140 this article.

141 (17) Establish or increase reserves from moneys

142 received or to be received by the board to secure or to
143 pay the principal of and interest on the bonds and notes
144 issued by the board pursuant to this article.

145 (18) Do all acts necessary and proper to carry out the
146 powers expressly granted to the board in this article.

**§16-26-7. Power of board to collect service charges and
exercise other powers of governmental agen-
cies in event of default; power to require
governmental agencies to enforce their
rights.**

1 In order to ensure that the public purposes to be
2 served by the board may be properly carried out and
3 in order to assure the timely payment to the board of
4 all sums due and owing under loan agreements with
5 governmental agencies, as referred to in section five of
6 this article, notwithstanding any provision to the
7 contrary elsewhere contained in this code, in event of
8 any default by a governmental agency under such a loan
9 agreement, the board shall have, and may, at its option,
10 exercise the following rights and remedies in addition
11 to the rights and remedies conferred by law or pursuant
12 to said loan agreement:

13 (1) The board may directly impose, in its own name
14 and for its own benefit, service charges determined by
15 it to be necessary under the circumstances upon all
16 users of the solid waste disposal project to be acquired
17 or constructed pursuant to such loan agreement, and
18 proceed directly to enforce and collect such service
19 charges, together with all necessary costs of such
20 enforcement and collection.

21 (2) The board may exercise, in its own name or in the
22 name of and as agent for the governmental agency, all
23 of the rights, board, powers and remedies of the
24 governmental agency with respect to the solid waste
25 disposal project or which may be conferred upon the
26 governmental agency by statute, rule, regulation or
27 judicial decision, including, without limitation, all rights
28 and remedies with respect to users of such solid waste
29 disposal project.

30 (3) The board may, by civil action, mandamus or
31 other judicial or administrative proceeding, compel
32 performance by such governmental agency of all of the
33 terms and conditions of such loan agreement including,
34 without limitation, the adjustment and increase of
35 service charges as required to repay the loan or
36 otherwise satisfy the terms of such loan agreement, the
37 enforcement and collection of such service charges and
38 the enforcement by such governmental agency of all
39 rights and remedies conferred by statute, rule, regula-
40 tion or judicial decision.

§16-26-8. Development and designation of solid waste disposal sheds by board.

1 The board shall maintain the division of the state into
2 geographical areas for solid waste management which
3 shall be known as solid waste disposal sheds. The board
4 may, from time to time, modify the boundaries of such
5 sheds in a manner consistent with the provisions of this
6 section. Before it modifies the sheds, the board shall
7 consult with the affected municipalities and county or
8 regional solid waste authorities and obtain and evaluate
9 their opinions as to how many sheds there should be and
10 where their boundaries should be located. The board
11 shall then cause feasibility and cost studies to be made
12 in order for it to designate the solid waste disposal sheds
13 within each of which the most dependable, effective,
14 efficient and economical solid waste disposal projects
15 may be established. The sheds shall not overlap and
16 shall cover the entire state.

17 The board shall designate the sheds so that:

18 (1) The goal of providing solid waste collection and
19 disposal service to each household, business and industry
20 in the state can reasonably be achieved.

21 (2) The total cost of solid waste collection and disposal
22 and the cost of solid waste collection and disposal within
23 each shed and per person can be kept as low as possible.

24 (3) Solid waste collection and disposal service, facil-
25 ities and projects can be integrated in the most feasible,
26 dependable, effective, efficient and economical manner.

27 (4) No county is located in more than one shed:
28 *Provided*, That the board may divide a county among
29 two or more sheds upon request of the appropriate
30 county or regional solid waste authority.

31 The board, in modifying the boundaries of solid waste
32 disposal sheds, is exempt from the provisions of chapter
33 twenty-nine-a.

§16-26-9. Expenditure of funds and use of health department employees for study and engineering of proposed projects; records to be kept; repayment to department.

1 With the approval of the board, the director of the
2 department of health shall expend out of any funds
3 available for the purpose such moneys as are necessary
4 for the study and engineering of any proposed solid
5 waste disposal project and may use its employees and
6 consultants for that purpose. All such expenses incurred
7 by the director of the department of health prior to the
8 issuance of solid waste disposal revenue bonds or notes
9 under this article shall be paid by him and charged to
10 the appropriate solid waste disposal project. The
11 director of the department of health shall keep proper
12 records and accounts showing the amounts so charged.
13 Upon the sale of solid waste disposal revenue bonds or
14 notes for a solid waste disposal project, the moneys so
15 expended by the director of the department of health
16 with the approval of the board in connection with such
17 project shall be repaid to the department of health from
18 the proceeds of such bonds or notes.

§16-26-10. Board empowered to issue solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

1 The board is hereby empowered to issue, from time
2 to time, solid waste disposal revenue bonds and notes of
3 the state in such principal amounts as the board deems
4 necessary to pay the cost of or finance in whole or in
5 part by loans to governmental agencies, one or more
6 solid waste development projects, but the aggregate
7 amount of all issues of bonds and notes outstanding at

8 one time for all projects authorized hereunder shall not
9 exceed that amount capable of being serviced by
10 revenues received from such projects, and shall not
11 exceed in the aggregate the sum of fifty million dollars.

12 The board may, from time to time, issue renewal
13 notes, issue bonds to pay such notes and whenever it
14 deems refunding expedient, refund any bonds by the
15 issuance of solid waste disposal revenue refunding bonds
16 of the state. Except as may otherwise be expressly
17 provided in this article or by the board, every issue of
18 its bonds or notes shall be obligations of the board
19 payable out of the revenues and reserves created for
20 such purposes by the board, which are pledged for such
21 payment, without preference or priority of the first
22 bonds issued, subject only to any agreements with the
23 holders of particular bonds or notes pledging any
24 particular revenues. Such pledge shall be valid and
25 binding from the time the pledge is made and the
26 revenue so pledged and thereafter received by the board
27 shall immediately be subject to the lien of such pledge
28 without any physical delivery thereof or further act and
29 the lien of any such pledge shall be valid and binding
30 as against all parties having claims of any kind in tort,
31 contract or otherwise against the board irrespective of
32 whether such parties have notice thereof. All such bonds
33 and notes shall have all the qualities of negotiable
34 instruments.

35 The bonds and notes shall be authorized by resolution
36 of the board, shall bear such dates and shall mature at
37 such times, in the case of any such note or any renewals
38 thereof not exceeding five years from the date of issue
39 of such original note, and in the case of any such bond
40 not exceeding fifty years from the date of issue, as such
41 resolution may provide. The bonds and notes shall bear
42 interest at such rate, be in such denominations, be in
43 such form, either coupon or registered, carry such
44 registration privileges, be payable in such medium of
45 payment, at such place and be subject to such terms of
46 redemption as the board may authorize. The board may
47 sell such bonds and notes at public or private sale, at
48 the price the board determines. The bonds and notes

49 shall be executed by the chairman and vice chairman
50 of the board, both of whom may use facsimile signa-
51 tures. The official seal of the board or a facsimile thereof
52 shall be affixed thereto or printed thereon and attested,
53 manually or by facsimile signature, by the secretary-
54 treasurer of the board, and any coupons attached thereto
55 shall bear the signature or facsimile signature of the
56 chairman of the board. In case any officer whose
57 signature, or a facsimile of whose signature, appears on
58 any bonds, notes or coupons ceases to be such officer
59 before delivery of such bonds or notes, such signature
60 or facsimile is nevertheless sufficient for all purposes
61 the same as if he had remained in office until such
62 delivery and, in case the seal of the board has been
63 changed after a facsimile has been imprinted on such
64 bonds or notes, such facsimile seal will continue to be
65 sufficient for all purposes.

66 Any resolution authorizing any bonds or notes or any
67 issue thereof may contain provisions (subject to such
68 agreements with bondholders or noteholders as may
69 then exist, which provisions shall be a part of the
70 contract with the holders thereof) as to pledging all or
71 any part of the revenues of the board to secure the
72 payment of the bonds or notes or of any issue thereof;
73 the use and disposition of revenues of the board; a
74 covenant to fix, alter and collect rentals, fees, service
75 charges and other charges so that pledged revenues will
76 be sufficient to pay the costs of operation, maintenance
77 and repairs, pay principal of and interest on bonds or
78 notes secured by the pledge of such revenues and
79 provide such reserves as may be required by the
80 applicable resolution or trust agreement; the setting
81 aside of reserve funds, sinking funds or replacement and
82 improvement funds and the regulation and disposition
83 thereof; the crediting of the proceeds of the sale of bonds
84 or notes to and among the funds referred to or provided
85 for in the resolution authorizing the issuance of the
86 bonds or notes; the use, lease, sale or other disposition
87 of any solid waste disposal project or any other assets
88 of the board; limitations on the purpose to which the
89 proceeds of sale of bonds or notes may be applied and
90 pledging such proceeds to secure the payment of the

91 bonds or notes or of any issue thereof; agreement of the
92 board to do all things necessary for the authorization,
93 issuance and sale of bonds in such amounts as may be
94 necessary for the timely retirement of notes issued in
95 anticipation of the issuance of bonds; limitations on the
96 issuance of additional bonds or notes; the terms upon
97 which additional bonds or notes may be issued and
98 secured; the refunding of outstanding bonds or notes; the
99 procedure, if any, by which the terms of any contract
100 with bondholders or noteholders may be amended or
101 abrogated, the holders of which must consent thereto,
102 and the manner in which such consent may be given;
103 limitations on the amount of moneys to be expended by
104 the board for operating, administrative or other
105 expenses of the board; securing any bonds or notes by
106 a trust agreement; and any other matters, of like or
107 different character, which in any way affect the security
108 or protection of the bonds or notes.

109 In the event that the sum of all reserves pledged to
110 the payment of such bonds or notes shall be less than
111 the minimum reserve requirements established in any
112 resolution or resolutions authorizing the issuance of such
113 bonds or notes, the chairman of the board shall certify,
114 on or before the first day of December of each year, the
115 amount of such deficiency to the governor of the state,
116 for inclusion, if the governor shall so elect, of the amount
117 of such deficiency in the budget to be submitted to the
118 next session of the Legislature for appropriation to the
119 board to be pledged for payment of such bonds or notes:
120 *Provided*, That the Legislature shall not be required to
121 make any appropriation so requested, and the amount
122 of such deficiencies shall not constitute a debt or liability
123 of the state.

124 Neither the members of the board nor any person
125 executing the bonds or notes shall be liable personally
126 on the bonds or notes or be subject to any personal
127 liability or accountability by reason of the issuance
128 thereof.

§16-26-11. Trustee for bondholders; contents of trust agreement.

1 In the discretion of the board, any solid waste disposal
2 revenue bonds or notes or solid waste disposal revenue
3 refunding bonds issued by the board under this article
4 may be secured by a trust agreement between the board
5 and a corporate trustee, which trustee may be any trust
6 company or banking institution having the powers of a
7 trust company within or without this state.

8 Any such trust agreement may pledge or assign
9 revenues of the board to be received, but shall not
10 convey or mortgage any solid waste disposal project or
11 any part thereof. Any such trust agreement or any
12 resolution providing for the issuance of such bonds or
13 notes may contain such provisions for protecting and
14 enforcing the rights and remedies of the bondholders or
15 noteholders as are reasonable and proper and not in
16 violation of law, including the provisions contained in
17 section nine of this article, covenants setting forth the
18 duties of the board in relation to the acquisition of
19 property, the construction, improvement, maintenance,
20 repair, operation and insurance of the solid waste
21 disposal project, the cost of which is paid in whole or
22 in part from the proceeds of such bonds or notes, the
23 rentals or other charges to be imposed for the use or
24 services of any solid waste disposal project, provisions
25 with regard to the payment of the principal of and
26 interest, charges and fees on loans made to government-
27 tal agencies from the proceeds of such bonds or notes,
28 the custody, safeguarding, and application of all moneys
29 and provisions for the employment of consulting
30 engineers in connection with the construction or
31 operation of such solid waste disposal project. Any
32 banking institution or trust company incorporated
33 under the laws of this state which may act as depository
34 of the proceeds of bonds or notes or of revenues shall
35 furnish such indemnifying bonds or pledge such
36 securities as are required by the board. Any such trust
37 agreement may set forth the rights and remedies of the
38 bondholders and noteholders and of the trustee and may
39 restrict individual rights of action by bondholders and
40 noteholders as customarily provided in trust agreements
41 or trust indentures securing similar bonds. Such trust
42 agreement may contain such other provisions as the

43 board deems reasonable and proper for the security of
44 the bondholders or noteholders. All expenses incurred in
45 carrying out the provisions of any such trust agreement
46 may be treated as a part of the cost of the operation of
47 the solid waste disposal project. Any such trust agree-
48 ment or resolution authorizing the issuance of solid
49 waste disposal revenue bonds may provide the method
50 whereby the general administrative overhead expenses
51 of the board shall be allocated among the several
52 projects acquired or constructed by it as a factor of the
53 operating expenses of each such project.

§16-26-12. Legal remedies of bondholders and trustees.

1 Any holder of solid waste disposal revenue bonds
2 issued under the authority of this article or any of the
3 coupons appertaining thereto and the trustee under any
4 trust agreement, except to the extent the rights given
5 by this article may be restricted by the applicable
6 resolution or such trust agreement, may by civil action,
7 mandamus or other proceeding, protect and enforce any
8 rights granted under the laws of this state or granted
9 under this article, by the trust agreement or by the
10 resolution authorizing the issuance of such bonds, and
11 may enforce and compel the performance of all duties
12 required by this article, or by the trust agreement or
13 resolution, to be performed by the board or any officer
14 or employee thereof, including the fixing, charging and
15 collecting of sufficient rentals, fees, service charges or
16 other charges.

**§16-26-13. Bonds and notes not debt of state, county,
municipality or of any political subdivision;
expenses incurred pursuant to article.**

1 Solid waste disposal revenue bonds and notes and solid
2 waste disposal revenue refunding bonds issued under
3 authority of this article and any coupons in connection
4 therewith shall not constitute a debt or a pledge of the
5 faith and credit or taxing power of this state or of any
6 county, municipality or any other political subdivision
7 of this state, and the holders or owners thereof shall
8 have no right to have taxes levied by the Legislature or
9 taxing authority of any county, municipality or any

10 other political subdivision of this state for the payment
11 of the principal thereof or interest thereon, but such
12 bonds and notes shall be payable solely from the
13 revenues and funds pledged for their payment as
14 authorized by this article unless the notes are issued in
15 anticipation of the issuance of bonds or the bonds are
16 refunded by refunding bonds issued under authority of
17 this article, which bonds or refunding bonds shall be
18 payable solely from revenues and funds pledged for
19 their payment as authorized by this article. All such
20 bonds and notes shall contain on the face thereof a
21 statement to the effect that the bonds or notes, as to both
22 principal and interest, are not debts of the state or any
23 county, municipality or political subdivision thereof, but
24 are payable solely from revenues and funds pledged for
25 their payment.

26 All expenses incurred in carrying out the provisions
27 of this article shall be payable solely from funds
28 provided under authority of this article. This article
29 does not authorize the board to incur indebtedness or
30 liability on behalf of or payable by the state or any
31 county, municipality or political subdivision thereof.

**§16-26-14. Use of funds, properties, etc., by board;
restrictions thereon.**

1 All moneys, properties and assets acquired by the
2 board, whether as proceeds from the sale of solid waste
3 disposal revenue bonds or as revenues or otherwise, shall
4 be held by it in trust for the purposes of carrying out
5 its powers and duties, and shall be used and reused in
6 accordance with the purposes and provisions of this
7 article. Such moneys shall at no time be commingled
8 with other public funds. Such moneys, except as
9 otherwise provided in any resolution authorizing the
10 issuance of solid waste disposal revenue bonds or in any
11 trust agreement securing the same, or except when
12 invested pursuant to section fifteen of this article, shall
13 be kept in appropriate depositories and secured as
14 provided and required by law. The resolution authoriz-
15 ing the issuance of such bonds of any issue or the trust
16 agreement securing such bonds shall provide that any
17 officer to whom, or any banking institution or trust

18 company to which, such moneys are paid shall act as
19 trustee of such moneys and hold and apply them for the
20 purposes hereof, subject to the conditions this article and
21 such resolution or trust agreement provide.

§16-26-15. Investment of funds by board.

1 The board is hereby authorized and empowered to
2 invest any funds not needed for immediate disbursement
3 in any of the following securities:

4 (1) Direct obligations of or obligations guaranteed by
5 the United States of America;

6 (2) Bonds, debentures, notes or other evidences of
7 indebtedness issued by any of the following agencies:
8 Banks for cooperatives; federal intermediate credit
9 banks; federal home loan bank system; Export-Import
10 Bank of the United States; federal land banks; the
11 Federal National Mortgage Association or the Govern-
12 ment National Mortgage Association;

13 (3) Public housing bonds issued by public agencies or
14 municipalities and fully secured as to the payment of
15 both principal and interest by a pledge of annual
16 contributions under any annual contributions contract
17 or contracts with the United States of America; or
18 temporary notes issued by public agencies or municipal-
19 ities or preliminary loan notes issued by public agencies
20 or municipalities, in each case, fully secured as to the
21 payment of both principal and interest by a requisition
22 or payment agreement with the United States of
23 America;

24 (4) Certificates of deposit secured by obligations of the
25 United States of America;

26 (5) Direct obligations of or obligations guaranteed by
27 the state of West Virginia; or

28 (6) Direct and general obligations of any other state
29 within the territorial United States, to the payment of
30 the principal of and interest on which the full faith and
31 credit of such state is pledged: *Provided*, That at the
32 time of their purchase, such obligations are rated in
33 either of the two highest rating categories by a
34 nationally recognized bond-rating agency.

35 Funds of the board in excess of current needs, except
36 as otherwise provided in any resolution authorizing the
37 issuance of its solid waste disposal revenue bonds or in
38 any trust agreement securing the same, may be invested
39 by the board in any security or securities in which the
40 West Virginia state board of investments is authorized
41 to invest under sections nine and ten, article six, chapter
42 twelve of this code, except those securities specified in
43 subsections (f) and (g) of said section nine. Income from
44 all such investments of moneys in any fund shall be
45 credited to such funds as the board determines, subject
46 to the provisions of any such resolution or trust
47 agreement and such investments may be sold at such
48 times as the board determines.

**§16-26-16. Rentals, fees, service charges and other
revenues from solid waste disposal pro-
jects; contracts and leases of board; coop-
eration of other governmental agencies;
bonds of such agencies.**

1 This section shall apply to any solid waste disposal
2 project or projects which are owned in whole or in part
3 by the board.

4 The board may charge, alter and collect rentals, fees,
5 service charges or other charges for the use or services
6 of any solid waste disposal project, and contract in the
7 manner provided by this section with one or more
8 persons, one or more governmental agencies, or any
9 combination thereof, desiring the use or services thereof,
10 and fix the terms, conditions, rentals, fees, service
11 charges or other charges for such use or services. Such
12 rentals, fees, service charges or other charges shall not
13 be subject to supervision or regulation by any other
14 authority, department, commission, board, bureau or
15 agency of the state, and such contract may provide for
16 acquisition by such person or governmental agency of
17 all or any part of such solid waste disposal project for
18 such consideration payable over the period of the
19 contract or otherwise as the board in its sole discretion
20 determines to be appropriate, but subject to the

21 provisions of any resolution authorizing the issuance of
22 solid waste disposal revenue bonds or notes or solid
23 waste disposal revenue refunding bonds of the board or
24 any trust agreement securing the same. Any govern-
25 mental agency which has power to construct, operate
26 and maintain solid waste disposal facilities may enter
27 into a contract or lease with the board whereby the use
28 or services of any solid waste disposal project of the
29 board will be made available to such governmental
30 agency and pay for such use or services such rentals,
31 fees, service charges or other charges as may be agreed
32 to by such governmental agency and the board.

33 Any governmental agency or agencies or combination
34 thereof may cooperate with the board in the acquisition
35 or construction of a solid waste disposal project and shall
36 enter into such agreements with the board as are
37 necessary, with a view to effective cooperative action
38 and safeguarding of the respective interests of the
39 parties thereto, which agreements shall provide for such
40 contributions by the parties thereto in such proportion
41 as may be agreed upon and such other terms as may
42 be mutually satisfactory to the parties, including,
43 without limitation, the authorization of the construction
44 of the project by one of the parties acting as agent for
45 all of the parties and the ownership and control of the
46 project by the board to the extent necessary or approp-
47 riate for purposes of the issuance of solid waste disposal
48 revenue bonds by the board. Any governmental agency
49 may provide such contribution as is required under such
50 agreements by the appropriation of money or, if
51 authorized by a favorable vote of the electors to issue
52 bonds or notes or levy taxes or assessments and issue
53 notes or bonds in anticipation of the collection thereof,
54 by the issuance of bonds or notes or by the levying of
55 taxes or assessments and the issuance of bonds or notes
56 in anticipation of the collection thereof, and by the
57 payment of such appropriated money or the proceeds of
58 such bonds or notes to the board pursuant to such
59 agreements.

60 Any governmental agency, pursuant to a favorable
61 vote of the electors in an election held before or after

62 the effective date of this section for the purpose of
63 issuing bonds to provide funds to acquire, construct or
64 equip, or provide real estate and interests in real estate
65 for a solid waste disposal project, whether or not the
66 governmental agency at the time of such election had
67 the board to pay the proceeds from such bonds or notes
68 issued in anticipation thereof to the board as provided
69 in this section, may issue such bonds or notes in
70 anticipation of the issuance thereof and pay the proceeds
71 thereof to the board in accordance with an agreement
72 between such governmental agency and the board:
73 *Provided*, That the legislative board of the governmental
74 agency finds and determines that the solid waste
75 disposal project to be acquired or constructed by the
76 board in cooperation with such governmental agency
77 will serve the same public purpose and meet substan-
78 tially the same public need as the project otherwise
79 proposed to be acquired or constructed by the govern-
80 mental agency with the proceeds of such bonds or notes.

**§16-26-17. Maintenance, operation and repair of projects;
repair of damaged property; reports by
board to governor and Legislature.**

1 Each solid waste development project, when con-
2 structed and placed in operation, shall be maintained
3 and kept in good condition and repair by the board or
4 if owned by a governmental agency, by such governmen-
5 tal agency, or the board or such governmental agency
6 shall cause the same to be maintained and kept in good
7 condition and repair. Each such project owned by the
8 board shall be operated by such operating employees as
9 the board employs or pursuant to a contract or lease
10 with a governmental agency or person. All public or
11 private property damaged or destroyed in carrying out
12 the provision of this article and in the exercise of the
13 powers granted hereunder with regard to any project
14 shall be restored or repaired and placed in its original
15 condition, as nearly as practicable, or adequate compen-
16 sation made therefor out of funds provided in accor-
17 dance with the provisions of this article.

18 As soon as possible after the close of each fiscal year,
19 the board shall make an annual report of its activities

20 for the preceding fiscal year to the governor and the
21 Legislature. Each such report shall set forth a complete
22 operating and financial statement covering the board's
23 operations during the preceding fiscal year. The board
24 shall cause an audit of its books and accounts to be made
25 at least once each fiscal year by certified public
26 accountants and the cost thereof may be treated as a
27 part of the cost of construction or of operation of its
28 projects. A report of the audit shall be submitted to the
29 governor and the Legislature.

§16-26-19. Exemption from taxation.

1 The board shall not be required to pay any taxes or
2 assessments upon any solid waste disposal project or
3 upon any property acquired or used by the board or
4 upon the income therefrom. Bonds and notes issued by
5 the board and all interest and income thereon shall be
6 exempt from all taxation by this state, or any county,
7 municipality, political subdivision or agency thereof,
8 except inheritance taxes.

§16-26-20. Governmental agencies authorized to convey property.

1 All governmental agencies, notwithstanding any
2 provision of law to the contrary, may lease, lend, grant
3 or convey to the board, at its request, upon such terms
4 as the proper authorities of such governmental agencies
5 deem reasonable and fair and without the necessity for
6 an advertisement, auction, order of court or other action
7 or formality, other than the regular and formal action
8 of the governmental agency concerned, any real prop-
9 erty or interests therein, including improvements
10 thereto or personal property which is necessary or
11 convenient to the effectuation of the authorized purposes
12 of the board, including public roads and other real
13 property or interests therein, including improvements
14 thereto or personal property already devoted to public
15 use.

§16-26-21. Financial interest in contracts, projects, etc., prohibited; gratuities prohibited; penalty.

1 No officer, member or employee of the board may be

2 financially interested, directly or indirectly, in any
3 contract of any person with the board, or in the sale of
4 any property, real or personal, to or by the board. This
5 section does not apply to contracts or purchases of
6 property, real or personal, between the board and any
7 governmental agency.

8 No officer, member or employee of the board may
9 have or acquire any financial interest, either direct or
10 indirect, in any project or activity of the board or in any
11 services or material to be used or furnished in connection
12 with any project or activity of the board. If an
13 officer, member or employee of the board has any such
14 interest at the time he becomes an officer, member or
15 employee of the board, he shall disclose and divest
16 himself of it. Failure to do so shall be cause for dismissal
17 from the position he holds with the authority.

18 This section does not apply in instances where a
19 member of the board who is a contract solid waste
20 hauler either seeks or has a financial interest, direct or
21 indirect, in any project or activity of the board or in any
22 services or material to be used or furnished in connection
23 with any project or activity of the board: *Provided*,
24 That that member shall fully disclose orally and in
25 writing to the board the nature and extent of any
26 interest, prior to any vote by the board which involves
27 his interest, withdraw from any deliberation or discussion
28 by the board of matters involving his interest, and
29 refrain from voting on any matter which directly or
30 indirectly affects him.

31 No officer, member or employee of the board may
32 accept a gratuity from any person doing business with
33 the board or from any person for the purpose of gaining
34 favor with the board.

35 Any officer, member or employee of the board who
36 has any financial interest prohibited by this section or
37 who fails to comply with its provisions is guilty of a
38 misdemeanor, and, upon conviction thereof, shall be
39 fined not more than one thousand dollars, or imprisoned
40 in the county jail not more than one year, or both fined
41 and imprisoned.

§16-26-22. Conduct of proceedings of board.

- 1 The board shall comply with all of the requirements
- 2 in article nine-a, chapter six of this code.

§16-26-23. Regulation of solid waste collectors and haulers to continue under public service commission; bringing about their compliance with solid waste disposal shed plan and solid waste disposal projects; giving testimony at commission hearings.

- 1 Solid waste collectors and haulers who are "common
- 2 carriers by motor vehicle," as defined in section two,
- 3 article one, chapter twenty-four-a of this code, shall
- 4 continue to be regulated by the public service commis-
- 5 sion in accordance with the provisions of chapter
- 6 twenty-four-a and rules and regulations promulgated
- 7 thereunder. Nothing in this article shall give the board
- 8 any power or right to regulate such solid waste
- 9 collectors and haulers in any manner, but the public
- 10 service commission, when it issues a new certificate of
- 11 convenience and necessity, or when it alters or adjusts
- 12 the provisions of any existing certificate of convenience
- 13 and necessity, or when it approves the assignment or
- 14 transfer of any certificate of convenience and necessity,
- 15 shall consult with the board regarding what action it
- 16 could take which would most likely further the imple-
- 17 mentation of the board's solid waste disposal shed plan
- 18 and solid waste disposal projects and shall take any
- 19 reasonable action that will lead to or bring about
- 20 compliance of such waste collectors and haulers with
- 21 such plan and projects.

- 22 At any hearing conducted by the public service
- 23 commission pertaining to solid waste collectors and
- 24 haulers on any of these matters, any member of the
- 25 board, the director or an employee of the board
- 26 designated by the director may appear before the
- 27 commission and present evidence.

§16-26-24. Cooperation of board and enforcement agencies in collecting and disposing of abandoned household appliances and motor vehicles, etc.

1 The provisions of this article are complementary to
2 those contained in article twenty-four, chapter seventeen
3 of this code, and do not alter or diminish the authority
4 of any enforcement agency, as defined in section two
5 thereof, to collect and dispose of abandoned household
6 appliances and motor vehicles, inoperative household
7 appliances and junked motor vehicles and parts thereof,
8 including tires. The board and such enforcement
9 agencies shall cooperate fully with each other in
10 collecting and disposing of such solid waste.

CHAPTER 20. NATURAL RESOURCES.

Article

- 9. County and Regional Solid Waste Authorities.
- 10. Commercial Hazardous Waste Management Facility Siting Board.
- 11. West Virginia Recycling Program.

ARTICLE 9. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

- §20-9-1. Legislative findings and purposes.
- §20-9-2. Definitions.
- §20-9-5a. Election by county commission to assume powers and duties of the county solid waste authority.
- §20-9-8. Assistance to county or regional solid waste authorities by West Virginia state solid waste management board, department of natural resources, department of health and the attorney general.
- §20-9-12a. Commercial solid waste facility siting plan; facilities subject to plan, criteria; approval by West Virginia state solid waste management board; effect on facility siting; public hearings; rules and regulations.
- §20-9-12b. Interim siting approval for commercial solid waste facilities.
- §20-9-12c. Solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties.

§20-9-1. Legislative findings and purposes.

1 The Legislature finds that the improper and uncon-
2 trolled collection, transportation, processing and dispo-
3 sal of domestic and commercial garbage, refuse and
4 other solid wastes in the state of West Virginia results
5 in: (1) A public nuisance and a clear and present danger
6 to the citizens of West Virginia, (2) the degradation of
7 the state's environmental quality including both surface
8 and groundwaters which provide essential and irre-
9 placeable sources of domestic and industrial water

10 supplies, (3) provides harborages and breeding places
11 for disease-carrying, injurious insects, rodents and other
12 pests injurious to the public health, safety and welfare,
13 (4) decreases public and private property values and
14 results in the blight and deterioration of the natural
15 beauty of the state, (5) has adverse social and economic
16 effects on the state and its citizens, and (6) results in the
17 waste and squandering of valuable nonrenewable
18 resources contained in such solid wastes which can be
19 recovered through proper recycling and resource-
20 recovery techniques with great social and economic
21 benefits for the state.

22 The Legislature further finds that the proper collec-
23 tion, transportation, processing, recycling and disposal
24 of solid waste is for the general welfare of the citizens
25 of the state and that the lack of proper and effective
26 solid waste collection services and disposal facilities
27 demands that the state of West Virginia and its political
28 subdivisions act promptly to secure such services and
29 facilities in both the public and private sectors.

30 The Legislature further finds that other states of these
31 United States of America have imposed stringent
32 standards for the proper collection and disposal of solid
33 waste and that the relative lack of such standards and
34 enforcement for such activities in West Virginia has
35 resulted in the importation and disposal into the state
36 of increasingly large amounts of infectious, dangerous
37 and undesirable solid waste and hazardous waste from
38 other states by persons and firms who wish to avoid the
39 costs and requirements for proper, effective and safe
40 disposal of such wastes in the states of origin.

41 Therefore, it is the purpose of the Legislature to
42 protect the public health and welfare by providing for
43 a comprehensive program of solid waste collection,
44 processing, recycling and disposal to be implemented by
45 state and local government in cooperation with the
46 private sector. The Legislature intends to accomplish
47 this goal by establishing county and regional solid waste
48 authorities throughout the state to develop and imple-
49 ment litter and solid waste control plans. It is the
50 further purpose of the Legislature to restrict and

51 regulate persons and firms from exploiting and endan-
52 gering the public health and welfare of the state by
53 disposing of solid wastes and other dangerous materials
54 which would not be accepted for disposal in the location
55 where such wastes or materials were generated.

56 The Legislature further finds that the potential
57 impacts of proposed commercial solid waste facilities
58 may have a deleterious and debilitating impact upon the
59 transportation network, property values, economic
60 growth, environmental quality, other land uses and the
61 public health and welfare in affected communities. The
62 Legislature also finds that the siting of such facilities
63 is not being adequately addressed to protect these
64 compelling interests of counties and local communities.

65 The Legislature further finds that affected citizens
66 and local governments often look to state environmental
67 regulatory agencies to resolve local land use conflicts
68 engendered by these proposed facilities. The Legislature
69 also finds that such local land use conflicts are most
70 effectively resolved in a local governmental forum
71 where citizens can most easily participate in the
72 decision-making process and the land use values of local
73 communities most effectively identified and incorpo-
74 rated into a comprehensive policy which reflects the
75 values and goals of those communities.

76 Therefore, it is the purpose of the Legislature to
77 enable local citizens to resolve the land use conflicts
78 which may be created by proposed commercial solid
79 waste facilities through the existing forum of county or
80 regional solid waste authorities.

§20-9-2. Definitions.

1 Unless the context clearly requires a different
2 meaning, as used in this article the terms:

3 (a) "Approved solid waste facility" means a commer-
4 cial solid waste facility or practice which has a valid
5 permit or compliance order under article five-f of this
6 chapter;

7 (b) "Commercial solid waste facility" means any solid
8 waste facility which accepts solid waste generated by

9 sources other than the owner or operator of the facility
10 and shall not include an approved solid waste facility
11 owned and operated by a person for the sole purpose of
12 disposing of solid wastes created by that person or such
13 person and other person on a cost-sharing or nonprofit
14 basis and shall not include the legitimate reuse and
15 recycling of materials for structural fill, road base, mine
16 reclamation, and similar applications;

17 (c) "Compliance order" means an administrative
18 order issued pursuant to section five, article five-f,
19 chapter twenty of this code authorizing a solid waste
20 facility to operate without a solid waste permit;

21 (d) "Open dump" means any solid waste disposal
22 which does not have a permit under this article, or is
23 in violation of state law, or where solid waste is disposed
24 in a manner that does not protect the environment;

25 (e) "Person" means any industrial user, public or
26 private corporation, institution, association, firm or
27 company organized or existing under the laws of this or
28 any other state or country; the state of West Virginia;
29 governmental agency, including federal facilities;
30 political subdivision; county commission; municipal
31 corporation; industry; sanitary district; public service
32 district; drainage district; soil conservation district;
33 watershed improvement district; partnership; trust;
34 estate; person or individual; group of persons or
35 individuals acting individually or as a group; or any
36 legal entity whatever;

37 (f) "Sludge" means any solid, semisolid, residue or
38 precipitate, separated from or created by a municipal,
39 commercial or industrial waste treatment plant, water
40 supply treatment plant or air pollution control facility
41 or any other such waste having similar origin;

42 (g) "Solid waste" means any garbage, paper, litter,
43 refuse, cans, bottles, sludge from a waste treatment
44 plant, water supply treatment plant or air pollution
45 control facility, other discarded material, including
46 carcasses of any dead animal or any other offensive or
47 unsightly matter, solid, liquid, semisolid or contained
48 liquid or gaseous material resulting from industrial,

49 commercial, mining or from community activities but
50 does not include solid or dissolved material in sewage,
51 or solid or dissolved materials in irrigation return flows
52 or industrial discharges which are point sources and
53 have permits under article five-a, chapter twenty of this
54 code, or source, special nuclear or by-product material
55 as defined by the Atomic Energy Act of 1954, as
56 amended, or a hazardous waste either identified or
57 listed under article five-e, chapter twenty of this code
58 or refuse, slurry, overburden or other waste or material
59 resulting from coal-fired electric power generation, the
60 exploration, development, production, storage and
61 recovery of coal, oil and gas, and other mineral
62 resources placed or disposed of at a facility which is
63 regulated under chapter twenty-two, twenty-two-a or
64 twenty-two-b of this code, so long as such placement or
65 disposal is in conformance with a permit issued
66 pursuant to said chapters; "solid waste" shall also not
67 include materials which are recycled by being used or
68 reused in an industrial process to make a product, as
69 effective substitutes for commercial products, or are
70 returned to the original process as a substitute for raw
71 material feedstock;

72 (h) "Solid waste disposal" means the practice of
73 disposing solid waste including placing, depositing,
74 dumping or throwing or causing to be placed, deposited,
75 dumped or thrown any solid waste;

76 (i) "Solid waste disposal shed" means the geographical
77 area which the resource recovery—solid waste disposal
78 authority designates and files in the state register
79 pursuant to section eight, article twenty-six, chapter
80 sixteen of this code; and

81 (j) "Solid waste facility" means any system, facility,
82 land, contiguous land, improvements on the land,
83 structures or other appurtenances or methods used for
84 processing, recycling or disposing of solid waste,
85 including landfills, transfer stations, resource recovery
86 facilities and other such facilities not herein specified.

§20-9-5a. Election by county commission to assume powers and duties of the county solid waste authority.

1 Notwithstanding any provision of this article, any
2 county commission which, on the first day of July, one
3 thousand nine hundred eighty-eight, held a valid permit
4 or compliance order for a commercial solid waste
5 transfer station issued pursuant to article five-f of this
6 chapter, may elect to assume all the duties, powers,
7 obligations, rights, title and interests vested in the
8 county solid waste authority by this chapter. A county
9 commission may, prior to the first day of October, one
10 thousand nine hundred eighty-nine, exercise this right
11 of election by entering an order declaring such election
12 and serving a certified copy thereof upon the resource
13 recovery—solid waste disposal authority. Thirty days
14 after entry of said order by the county commission the
15 county solid waste authority shall cease to exist and the
16 county commission shall assume all the duties, powers,
17 obligations, rights, title and interest vested in the
18 former authority pursuant to this chapter.

**§20-9-8. Assistance to county or regional solid waste
authorities by West Virginia state solid waste
management board, department of natural
resources, department of health and the
attorney general.**

1 The department of natural resources, the resource
2 recovery—solid waste disposal authority, and the
3 department of health shall provide technical assistance
4 to each county and regional solid waste authority as
5 reasonable and practicable for the purposes of this
6 article within the existing resources and appropriations
7 of each agency available for such purposes. The attorney
8 general shall provide legal counsel and representation
9 to each county and regional solid waste authority for the
10 purposes of this article within the existing resources and
11 appropriations available for such purposes, or with the
12 written approval of the attorney general, said authority
13 may employ counsel to represent it.

**§20-9-12a. Commercial solid waste facility siting plan;
facilities subject to plan; criteria; approval
by West Virginia state solid waste manage-
ment board; effect on facility siting; public
hearings; rules and regulations.**

1 (a) On or before the first day of July, one thousand
2 nine hundred ninety, each county or regional solid waste
3 authority shall prepare and complete a commercial solid
4 waste facilities siting plan for the county or counties
5 within its jurisdiction: *Provided*, That the West Virginia
6 state solid waste management board may authorize any
7 reasonable extension of up to one year for the completion
8 of the said siting plan by any county or regional solid
9 waste authority. The siting plan shall identify zones
10 within each county where siting of the following
11 facilities is authorized or prohibited:

12 (1) Commercial solid waste landfills which may
13 accept an aggregate of more than ten thousand tons of
14 solid waste per month.

15 (2) Commercial solid waste landfills which shall
16 accept only less than an aggregate of ten thousand tons
17 of solid waste per month.

18 (3) Commercial solid waste transfer stations or
19 commercial facilities for the processing or recycling of
20 solid waste.

21 The siting plan shall include an explanation of the
22 rationale for the zones established therein based on the
23 criteria established in subsection (b) of this section.

24 (b) The county or regional solid waste authority shall
25 develop the siting plan authorized by this section based
26 upon the consideration of one or more of the following
27 criteria: The efficient disposal of solid waste, including
28 all solid waste generated within the county or region,
29 economic development, transportation facilities, property
30 values, groundwater and surface waters, geological
31 and hydrological conditions, aesthetic and environmental
32 quality, historic and cultural resources, the present
33 or potential land uses for residential, commercial,
34 recreational, environmental conservation or industrial
35 purposes and the public health, welfare and convenience.
36 The plan shall be developed based upon information readily
37 available. Due to the limited funds and time available
38 the plan need not be an exhaustive and technically detailed
39 analysis of the criteria set forth above. Unless the information
40 readily available clearly

41 establishes that an area is suitable for the location of a
42 commercial solid waste facility or not suitable for such
43 a facility, the area shall be designated as an area in
44 which the location of a commercial solid waste facility
45 is tentatively prohibited. Any person making an
46 application for the redesignation of a tentatively
47 prohibited area shall make whatever examination is
48 necessary and submit specific detailed information in
49 order to meet the provision established in subsection
50 (g) of this section.

51 (c) Prior to completion of the siting plan, the county
52 or regional solid waste authority shall complete a draft
53 siting plan and hold at least one public hearing in each
54 county encompassed in said draft siting plan for the
55 purpose of receiving public comment thereon. The
56 authority shall provide notice of such public hearings
57 and encourage and solicit other public participation in
58 the preparation of the siting plan as required by the
59 rules and regulations promulgated by the West Virginia
60 state solid waste management board for this purpose.
61 Upon completion of the siting plan, the county or
62 regional solid waste authority shall file said plan with
63 the West Virginia state solid waste authority.

64 (d) The siting plan shall take effect upon approval by
65 the West Virginia state solid waste management board
66 pursuant to the rules and regulations promulgated for
67 this purpose. Upon approval of said plan, the West
68 Virginia state solid waste management board shall
69 transmit a copy thereof to the director of the department
70 of natural resources and to the clerk of the county
71 commission of the county encompassed by said plan
72 which county clerk shall file the plan in an appropriate
73 manner and shall make the plan available for inspection
74 by the public.

75 (e) Effective upon approval of the siting plan by the
76 West Virginia state solid waste management board, it
77 shall be unlawful for any person to establish, construct,
78 install or operate a commercial solid waste landfill or
79 transfer station at a site not authorized by the siting
80 plan: *Provided*, That an existing commercial solid waste
81 landfill or transfer station which, on the effective date

82 of this section, held a valid solid waste permit or
83 compliance order issued by the department of natural
84 resources pursuant to article five-f of this chapter may
85 continue to operate but may not expand the spatial land
86 area of the said facility beyond that authorized by said
87 solid waste permit or compliance order, and may not
88 increase the aggregate monthly solid waste capacity in
89 excess of ten thousand tons monthly unless such a
90 facility is authorized by the siting plan.

91 (f) The county or regional solid waste authority may,
92 from time to time, amend the siting plan in a manner
93 consistent with the requirements of this section for
94 completing the initial siting plan and the rules and
95 regulations promulgated by the West Virginia state
96 solid waste management board for the purpose of such
97 amendments.

98 (g) Notwithstanding any provision of this code to the
99 contrary, upon application from a person who has filed
100 a pre-siting notice pursuant to section five-c, article five-
101 f of this chapter, the county or regional solid waste
102 authority or county commission, as appropriate, may
103 amend the siting plan by redesignating a zone that has
104 been designated as an area where a commercial solid
105 waste facility is tentatively prohibited to an area where
106 one is authorized. In such case, the person seeking the
107 change has the burden to affirmatively and clearly
108 demonstrate, based on the criteria set forth in subsection
109 (b) of this section, that a solid waste facility could be
110 appropriately operated in the public interest at such
111 location. The West Virginia state solid waste manage-
112 ment board shall provide, within available resources,
113 technical support to a county or regional solid waste
114 authority or county commission, as appropriate, when
115 requested by such authority or commission to assist it
116 in reviewing an application for any such amendment.

117 (h) The West Virginia state solid waste management
118 board shall prepare and adopt a siting plan for any
119 county or regional solid waste authority which does not
120 complete and file with the said state authority such a
121 siting plan in compliance with the provisions of this
122 section and the rules and regulations promulgated

123 thereunder. Any siting plan adopted by the West
124 Virginia state solid waste authority pursuant to this
125 subsection shall comply with the provisions of this
126 section, and the rules and regulations promulgated
127 thereunder, and shall have the same effect as a siting
128 plan prepared by a county or regional solid waste
129 authority and approved by the said state authority.

130 (i) The siting plan adopted pursuant to this section
131 shall incorporate the provisions of the litter and solid
132 waste control plan, as approved by the West Virginia
133 state solid waste management board pursuant to section
134 seven of this article, regarding collection and disposal
135 of solid waste and the requirements, if any, for addi-
136 tional commercial solid waste landfill and transfer
137 station capacity.

138 (j) The West Virginia state solid waste management
139 board is authorized and directed to promulgate rules
140 and regulations specifying the public participation
141 process, content, format, amendment, review and
142 approval of siting plans for the purposes of this section.

§20-9-12b. Interim siting approval for commercial solid waste facilities.

1 (a) Until the first day of July, one thousand nine
2 hundred ninety-one, or the effective date of the commer-
3 cial solid waste facility siting plan authorized by section
4 twelve-a of this article, whichever date occurs first, it
5 shall be unlawful for any person to establish, construct
6 or install a commercial solid waste landfill or transfer
7 station, or to expand the spatial land area of such an
8 existing facility, without a certificate of site approval
9 from the county or regional solid waste authority for the
10 county in which the facility would be situated: *Provided,*
11 That a person, who, on the effective date of this section,
12 holds a valid Class A approval permit issued by a county
13 commission, may obtain site approval from the county
14 commission for the county in which the facility would
15 be situated: *Provided, however,* That no such certificate
16 will be required for such an existing commercial solid
17 waste facility which on the effective date of this section
18 held a valid solid waste permit or compliance order

19 issued by the department of natural resources unless
20 such facility increases its spatial land area beyond that
21 authorized by such solid waste permit or compliance
22 order.

23 (b) The county or regional solid waste authority, or
24 county commission, as appropriate, shall issue or deny
25 the certificate of site approval based upon the consid-
26 eration of the effects of the proposed commercial solid
27 waste landfill or transfer station upon one or more of
28 the following criteria: The efficient disposal of solid
29 waste generated within the county or region, economic
30 development, transportation facilities, property values,
31 groundwater and surface waters, geological and hydro-
32 logical conditions, aesthetic and environmental quality,
33 historic or cultural resources, the present or potential
34 land uses for residential, commercial, recreational,
35 industrial or environmental conservation purposes and
36 the public health, welfare and convenience.

37 (c) The county or regional solid waste authority, or
38 county commission, as appropriate, shall issue or deny
39 the certificate of site approval within a reasonable
40 period upon receiving the pre-siting notice for the
41 proposed commercial solid waste facility required by
42 section five-c of article five-f of this chapter.

43 (d) The county or regional solid waste authority, or
44 county commission, as appropriate, shall hold a public
45 hearing prior to the issuance of a certificate of site
46 approval for the purpose of receiving public comment
47 upon the siting of the proposed commercial solid waste
48 facility. The authority shall provide notice of such public
49 hearing with publication of a Class II legal advertise-
50 ment in a qualified newspaper serving the county where
51 the proposed site is situated.

52 (e) The county or regional solid waste authority, or
53 county commission, as appropriate, shall complete
54 findings of fact and conclusions relating to the criteria
55 authorized in subsection (b) hereof which support its
56 decision to issue or deny a certificate of site approval.

57 (f) Any person adversely affected by a decision of a
58 county or regional solid waste authority, or county

59 commission, as appropriate, to issue or deny a certificate
60 of site approval pursuant to this section may appeal that
61 decision to the circuit court for the county in which the
62 proposed commercial solid waste facility would be
63 located.

§20-9-12c. Solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties.

1 (a) *Imposition.*—Effective the first day of July, one
2 thousand nine hundred eighty-nine, a solid waste
3 assessment interim fee is hereby levied and imposed
4 upon the disposal of solid waste at any solid waste
5 disposal facility in this state to be collected at the rate
6 of one dollar per ton or part thereof of solid waste. Said
7 interim fee shall expire on the thirtieth day of June, one
8 thousand nine hundred ninety-one. The fee imposed by
9 this section shall be in addition to all other fees levied
10 by law.

11 (b) *Collection, return, payment and record.*—The fee
12 herein imposed shall be paid by the person disposing of
13 solid waste at a solid waste disposal facility and shall
14 be collected by the operator of such facility and remitted
15 to the state tax commissioner. The fee accrues at the
16 time the solid waste is disposed of in this state. The fee
17 imposed by this section shall be due and payable on or
18 before the fifteenth day of the month next succeeding
19 the month in which the fee accrued together with a
20 return on such form or forms as prescribed by the state
21 tax commissioner. Each person disposing of solid waste
22 at a solid waste disposal facility and each person
23 required to collect the fee imposed by this section shall
24 keep complete and accurate records in such form as the
25 state tax commissioner may by regulation require.

26 (c) *Regulated motor carriers.*—The fee imposed by this
27 section and section twenty-two, article five, chapter
28 seven of this code shall be considered a necessary and
29 reasonable cost for motor carriers of solid waste subject
30 to the jurisdiction of the public service commission
31 under chapter twenty-four-a of this code.
32 Notwithstanding any provision of law to the contrary,

33 upon the filing of a petition by an affected motor carrier,
34 the public service commission shall, within fourteen
35 days, reflect the cost of said fee in said motor carrier's
36 rates for solid waste removal service.

37 (d) *Definition of solid waste disposal facility.*—For
38 purposes of this section, the term "solid waste disposal
39 facility" means any approved solid waste facility or open
40 dump in this state. Nothing herein shall be construed
41 to authorize in any way the creation or operation of or
42 contribution to an open dump.

43 (e) *Exemptions.*—The following transactions shall be
44 exempt from the fee imposed by this section:

45 (1) Disposal of solid waste at a solid waste disposal
46 facility by the person who owns, operates or leases the
47 solid waste disposal facility if it is used exclusively to
48 dispose of waste originally produced by such person in
49 such person's regular business or personal activities or
50 by persons utilizing the facility on a cost-sharing or
51 nonprofit basis;

52 (2) Reuse or recycling of any solid waste; and

53 (3) Disposal of residential solid waste by an individual
54 not in the business of hauling or disposing of solid waste
55 on such days and times as designated by the director of
56 the department of natural resources by regulation as
57 exempt from the fee imposed pursuant to section five-
58 a, article five-f, chapter twenty of this code.

59 (f) *Procedure and administration.*—Each and every
60 provision of the "West Virginia Tax Procedure and
61 Administration Act" set forth in article ten, chapter
62 eleven of this code shall apply to the fee imposed by this
63 section with like effect as if said act were applicable
64 only to the fee imposed by this section and were set forth
65 in extenso herein.

66 (g) *Criminal penalties.*—Notwithstanding section two,
67 article nine, chapter eleven of this code, sections three
68 through seventeen, article nine, chapter eleven of this
69 code shall apply to the fee by this section with like effect
70 as if said sections were the only fee imposed by this
71 section and were set forth in extenso herein.

72 (h) *Dedication of proceeds.*—The net proceeds of the
73 interim fee collected pursuant to this section shall be
74 transferred to a special revenue account designated as
75 the "Solid Waste Planning Fund" as such proceeds are
76 received by the state tax commissioner. The West
77 Virginia state solid waste management board shall
78 allocate the proceeds of the said fund as follows:

79 (1) Fifty percent of the total proceeds shall be divided
80 equally among, and paid over to, each county solid waste
81 authority to be expended for the purposes of this article:
82 *Provided*, That where a regional solid waste authority
83 exists, such funds shall be paid over to the regional solid
84 waste authority to be expended for the purposes of this
85 article in an amount equal to the total share of all
86 counties within the jurisdiction of said regional solid
87 waste authority; and

88 (2) Fifty percent of the total proceeds shall be
89 expended by the West Virginia state solid waste
90 management board for: (i) Grants to the county or
91 regional solid waste authorities for the purposes of this
92 article; (ii) administration, technical assistance or other
93 costs of the state solid waste management board
94 necessary to implement the purposes of this article.

95 (i) *Severability.*—If any provision of this section or the
96 application thereof shall for any reason be adjudged by
97 any court of competent jurisdiction to be invalid, such
98 judgment shall not affect, impair or invalidate the
99 remainder of this section, but shall be confined in its
100 operation to the provision thereof directly involved in
101 the controversy in which such judgment shall have been
102 rendered, and the applicability of such provision to other
103 persons or circumstances shall not be affected thereby.

104 (j) *Effective date.*—This section is effective on the first
105 day of July, one thousand nine hundred eighty-nine.

ARTICLE 10. COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITY SITING BOARD.

§20-10-1. Purpose and legislative findings.

§20-10-2. Definitions.

§20-10-3. Establishment of commercial hazardous waste management facility siting board; composition; appointment; compensation; powers; rules; and procedures.

§20-10-4. Effect of certification.

§20-10-5. Commercial hazardous waste management facility siting fund created; fees.

§20-10-6. Judicial review.

§20-10-7. Remedies.

§20-10-8. Short title.

§20-10-1. Purpose and legislative findings.

1 (a) The purpose of this article is to establish a state
2 commercial hazardous waste management facility siting
3 board and to establish the procedure for which approval
4 certificates shall be granted or denied for commercial
5 hazardous waste management facilities.

6 (b) The Legislature finds that hazardous waste is
7 generated throughout the state as a by-product of the
8 materials used and consumed by individuals, businesses,
9 enterprise and governmental units in the state, and that
10 the proper management of hazardous waste is necessary
11 to prevent adverse effects on the environment and to
12 protect public health and safety. The Legislature
13 further finds that:

14 (1) The availability of suitable facilities for the
15 treatment, storage and disposal of hazardous waste is
16 necessary to protect the environment resources and
17 preserve the economic strength of this state and to fulfill
18 the diverse needs of its citizens;

19 (2) Whenever a site is proposed for the treatment,
20 storage or disposal of hazardous waste, the nearby
21 residents and the affected county and municipalities
22 may have a variety of reasonable concerns regarding the
23 location, design, construction, operation, closing and
24 long-term care of facilities to be located at the site, the
25 effect of the facility upon their community's economic
26 development and environmental quality and the incor-
27 poration of such concerns into the siting process;

28 (3) Local authorities have the responsibility for
29 promoting public health, safety, convenience and
30 general welfare, encouraging planned and orderly land
31 use development, recognizing the needs of industry and
32 business, including solid waste disposal and the treat-
33 ment, storage and disposal of hazardous waste and that

34 reasonable concerns of local authorities should be
35 considered in the siting of commercial hazardous waste
36 management facilities; and

37 (4) New procedures are needed to resolve many of the
38 conflicts which arise during the process of siting
39 commercial hazardous waste management facilities.

§20-10-2. Definitions.

1 Unless the context clearly requires a different
2 meaning, as used in this article the terms;

3 (a) "Board" means the commercial hazardous waste
4 management facility siting board established pursuant
5 to section three of this article;

6 (b) "Commercial hazardous waste management facil-
7 ity" means any hazardous waste treatment, storage or
8 disposal facility which accepts hazardous waste, as
9 identified or listed by the director of the department of
10 natural resources under article five-e of this chapter,
11 generated by sources other than the owner or operator
12 of the facility and shall not include an approved
13 hazardous waste facility owned and operated by a
14 person for the sole purpose of disposing of hazardous
15 wastes created by that person or such person and other
16 persons on a cost-sharing or nonprofit basis;

17 (c) "Hazardous waste management facility" means
18 any facility including land and structures, appurtenan-
19 ces, improvements and equipment used for the treat-
20 ment, storage or disposal of hazardous wastes, which
21 accepts hazardous waste for storage, treatment or
22 disposal. For the purposes of this article, it does not
23 include: (i) Facilities for the treatment, storage or
24 disposal of hazardous wastes used principally as fuels in
25 an on-site production process; or (ii) facilities used
26 exclusively for the pretreatment of wastes discharged
27 directly to a publicly owned sewage treatment works. A
28 facility may consist of one or more treatment, storage
29 or disposal operational units.

§20-10-3. Establishment of commercial hazardous waste management facility siting board; composition; appointment; compensation; powers; rules; and procedures.

1 (a) There is hereby established a commercial hazard-
2 ous waste management facility siting board consisting
3 of nine members including the director of the depart-
4 ment of natural resources and the director of the air
5 pollution control commission who shall be nonvoting
6 members ex officio, two ad hoc members appointed by
7 the county commission of the county in which the facility
8 is or is proposed to be located and who shall be residents
9 of said county, and five other permanent members to be
10 appointed by the governor with the advice and consent
11 of the Senate, two of whom shall be representative of
12 industries engaged in business in this state and three of
13 whom shall be representative of the public at large. No
14 two or more of the five permanent voting members of
15 the board appointed by the governor shall be from the
16 same county. Upon initial appointment, which shall be
17 made by the governor within thirty days of the effective
18 date of this article, one of said other five members shall
19 be appointed for five years, one for four years, one for
20 three years, one for two years and one for one year
21 which terms shall commence on the effective date of this
22 article. Thereafter, said permanent members shall be
23 appointed for terms of five years each. Vacancies
24 occurring other than by expiration of a term shall be
25 filled by the governor in the same manner as the
26 original appointment for the unexpired portion of the
27 term. The term of the ad hoc members shall continue
28 until a final determination has been made in the
29 particular proceeding for which they are appointed.
30 Four of the voting members on the board shall consti-
31 tute a quorum for the transaction of any business, and
32 the decision of four voting members of the board shall
33 constitute action of the board. No person shall be eligible
34 to be an appointee of the governor to the board who has
35 any direct personal financial interest in any commercial
36 hazardous waste management enterprise. The five
37 permanent voting members of the board shall annually
38 elect from among themselves a chairman no later than
39 the thirty-first day of July of each calendar year. The
40 board shall meet upon the call of the chairman or upon
41 the written request of at least three of the voting
42 members of the board.

43 (b) Each member of the board, other than the two
44 members ex officio, shall be paid, out of funds approp-
45 riated for such purpose as compensation for his or her
46 services on the board, the sum of seventy-five dollars for
47 each day or substantial portion thereof that he or she
48 is actually engaged in their duties pursuant to this
49 article. In addition, each member, including members
50 ex officio, shall be reimbursed, out of moneys approp-
51 riated for such purpose, all reasonable sums which he
52 or she necessarily shall expend in the discharge of duties
53 as a member of the board. The department of natural
54 resources shall make available to the board such
55 professional and support staff and services as may be
56 necessary in order to support the board in carrying out
57 its responsibilities within the limit of funds available for
58 this purpose. The office of the attorney general shall
59 provide legal advice and representation to the board as
60 requested, within the limit of funds available for this
61 purpose, or the board, with the written approval of the
62 attorney general, may employ counsel to represent it.

63 (c) After the effective date of this article, no person
64 shall construct or commence construction of a commer-
65 cial hazardous waste management facility without first
66 obtaining a certificate of site approval issued by the
67 board in the manner prescribed herein. For the purpose
68 of this section, "construct" and "construction" shall mean
69 (i) with respect to new facilities, the significant alter-
70 ation of a site to install permanent equipment or
71 structures or the installation of permanent equipment or
72 structures; (ii) with respect to existing facilities, the
73 alteration or expansion of existing structures or
74 facilities to include accommodation of hazardous waste,
75 or expansion of more than fifty percent the area or
76 capacity of an existing hazardous waste facility, or any
77 change in design or process of a hazardous waste facility
78 that will result in a substantially different type of
79 facility. Construction does not include preliminary
80 engineering or site surveys, environmental studies, site
81 acquisition, acquisition of an option to purchase or
82 activities normally incident thereto.

83 (d) Upon receiving a written request from the owner

84 or operator of the facility, the board may allow, without
85 going through the procedures of this article, any
86 changes in the facilities which are designed (1) to
87 prevent a threat to human health or the environment
88 because of an emergency situation; (2) to comply with
89 federal or state laws and regulations; or (3) to result in
90 demonstrably safer or environmentally more acceptable
91 processes.

92 (e) An application for certificate of site approval shall
93 consist of a copy of all hazardous waste permits, if any,
94 and permit applications, if any, issued by or filed with
95 any state permit-issuing authority pursuant to article
96 five-e of this chapter and a detailed written analysis
97 with supporting documentation of the following factors:

98 (1) The nature of the probable environmental and
99 economic impacts, including, but not limited to, speci-
100 fication of the predictable adverse effects on quality of
101 natural environment, public health and safety, scenic,
102 historic, cultural and recreational values, water and air
103 quality, wildlife, property values, transportation net-
104 works, and an evaluation of measures to mitigate such
105 adverse effects;

106 (2) The nature of the environmental benefits likely to
107 be derived from such facility, including the resultant
108 decrease in reliance upon existing waste disposal
109 facilities which do not comply with applicable laws and
110 regulations, and a reduction in fuel consumption and
111 vehicle emissions related to long-distance transportation
112 of hazardous waste; and

113 (3) The economic benefits likely to be derived from
114 such facility, including, but not limited to, a reduction
115 in existing costs for the disposal of hazardous waste,
116 improvement to the state's ability to retain and attract
117 business and industry due to predictable and stable
118 waste disposal costs, and any economic benefits which
119 may accrue to the municipality or county in which the
120 facility is to be located.

121 (f) On or before sixty calendar days after the receipt

122 of such application, the board shall mail written notice
123 to the applicant as to whether or not such application
124 is complete. If, or when, the application is complete, the
125 board shall notify the applicant and the county commis-
126 sion of the county in which the facility is or is proposed
127 to be located. Said county commission shall thereupon,
128 within thirty days of receipt of such notice, appoint the
129 two ad hoc members of the board to act upon the
130 application.

131 (g) Immediately upon determining that an application
132 is complete, the board shall, at the applicant's expense,
133 cause a notice to be published in the state register,
134 which shall be no later than thirty calendar days after
135 the date of such written notice of completeness, and shall
136 provide notice to the chief executive office of each
137 municipality in which the proposed facility is to be
138 located and to the county commission of the county in
139 which the facility is proposed to be located, and shall
140 direct the applicant to provide reasonable notice to the
141 public which shall, at a minimum, include publication
142 as a Class I-O legal advertisement in at least two
143 newspapers having general circulation in the vicinity in
144 which the proposed facility is to be located identifying
145 the proposed location, type of facility and activities
146 involved, the name of the permittee, and the date, time
147 and place at which the board will convene a public
148 hearing with regard to the application. The date of the
149 hearing shall be set by the board and shall commence
150 within sixty days of the date of notice of completeness
151 of an application.

152 (h) The board shall conduct a public hearing upon the
153 application in the county in which the facility is to be
154 located and shall keep an accurate record of such
155 proceedings by stenographic notes and characters or by
156 mechanical or electronic means. Such proceedings shall
157 be transcribed at the applicant's expense. The board
158 may accept both written and oral comments on the
159 application.

160 (i) The commercial hazardous waste management
161 facility siting board request further information of the
162 applicant and shall render a decision based upon the

163 application and the record, either, requesting further
164 information, granting a certificate of site approval,
165 denying it, or granting it upon such terms, conditions
166 and limitations as the board deems appropriate. The
167 board shall base its decision upon the factors set forth
168 in subsection (e). The written decision of the board
169 containing its findings and conclusions shall be mailed
170 by certified mail to the applicant and to any requesting
171 person on or before sixty calendar days after receipt by
172 the board of a complete record of the hearing.

173 (j) The board may exercise all powers necessary or
174 appropriate to carry out the purposes and duties
175 provided in this article, including the power to promul-
176 gate rules in compliance with chapter twenty-nine-a of
177 this code.

§20-10-4. Effect of certification.

1 A grant of an approval certificate shall supersede any
2 local ordinance or regulation that is inconsistent with
3 the terms of the approval certificate. Nothing in this
4 chapter shall affect the authority of the host community
5 to enforce its regulations and ordinances to the extent
6 that they are not inconsistent with the terms and
7 conditions of the approval certificate. Grant of an
8 approval certificate shall not preclude or excuse the
9 applicant from the requirement to obtain approval or
10 permits under this chapter or other state or federal
11 laws.

§20-10-5. Commercial hazardous waste management facility siting fund created; fees.

1 (a) There is hereby created and established in the
2 state treasury a special revenue fund entitled the
3 "commercial hazardous waste management facility
4 siting fund" which may be expended by the director of
5 the department of natural resources for the following:

6 (1) The necessary expenses of the board which may
7 include expenses and compensation for each member of
8 the board as authorized by this article.

9 (2) Administration, professional and support services
10 provided by the department to the board.

11 (3) Legal counsel and representation provided by the
12 attorney general to the board for the purposes of this
13 article.

14 (b) The director of the department of natural resour-
15 ces shall promulgate rules and regulations, pursuant to
16 section one, article one, chapter twenty-nine-a of this
17 code, establishing reasonable fees to be charged each
18 applicant for a certificate of site approval. Such fees
19 shall be calculated to recover the reasonable and
20 necessary expenses of the board, department of natural
21 resources and attorney general which such agencies
22 incur as pursuant to this article.

§20-10-6. Judicial review.

1 (a) Any person having an interest adversely affected
2 by a final decision made and entered by the board is
3 entitled to judicial review thereof in the Circuit Court
4 of Kanawha County, or the circuit court of the county
5 in which the facility is, or is proposed to be, situated,
6 such appeal to be perfected by the filing of a petition
7 with the court within sixty days of the date of receipt
8 by the applicant of the board's written decision.

9 (b) The review shall be conducted by the court
10 without a jury and shall be upon the record made before
11 the board except that in cases of alleged irregularities
12 in procedure before the board not shown in the record,
13 testimony thereon may be taken before the court. The
14 court may hear oral arguments and require written
15 briefs.

16 The court may affirm the order or decision of the
17 board or remand the case for further proceedings. It
18 may reverse, vacate or modify the order or decision of
19 the board if the substantial rights of the petitioner or
20 petitioners have been prejudiced because the adminis-
21 trative findings, inferences, conclusions, decision or
22 order are:

23 (1) In violation of constitutional or statutory provi-
24 sions; or

- 25 (2) In excess of the statutory authority or jurisdiction
26 of the board; or
- 27 (3) Made upon unlawful procedures; or
- 28 (4) Affected by other error of law; or
- 29 (5) Clearly wrong in view of the reliable, probative
30 and substantial evidence on the whole record; or
- 31 (6) Arbitrary or capricious or characterized by abuse
32 of discretion or clearly unwarranted exercise of
33 discretion.
- 34 (c) The judgment of the circuit court shall be final
35 unless reversed, vacated or modified on appeal to the
36 supreme court of appeals. The petition seeking such
37 review must be filed with said supreme court of appeals
38 within ninety days from the date of entry of the
39 judgment of the circuit court.
- 40 (d) Legal counsel and services for the board in all
41 appeal proceedings shall be provided by the attorney
general.

§20-10-7. Remedies.

- 1 (a) Any person who violates this section shall be
2 compelled by injunction, in a proceeding instituted in
3 the circuit court or the locality where the facility or
4 proposed facility is to be located, to cease the violation.
- 5 (b) Such an action may be instituted by the board,
6 director of the department of natural resources, air
7 pollution control commission, political subdivision in
8 which the violation occurs, or any other person ag-
9 grieved by such violation. In any such action, it shall not
10 be necessary for the plaintiff to plead or prove irrepar-
11 able harm or lack of an adequate remedy at law. No
12 person shall be required to post any injunction bond or
13 other security under this section.
- 14 (c) No action may be brought under this section after
15 an approval certificate has been issued by the board,
16 notwithstanding the pendency of any appeals or other
17 challenges to the board's action.
- 18 (d) In any action under this section, the court may

19 award reasonable costs of litigation, including attorney
20 and expert witness fees, to any party if the party
21 substantially prevails on the merits of the case and if
22 in the determination of the court the party against
23 whom the costs are requested has acted in bad faith.

§20-10-8. Short title.

1 This article may be known and cited as the "Commer-
2 cial Hazardous Waste Management Facility Siting Act."

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-1. Short title.

§20-11-2. Legislative findings and purpose.

§20-11-3. Recycling goals.

§20-11-4. Recycling plans.

§20-11-5. Establishment of county recycling programs for solid waste;
petition for referendum to be placed on ballot; referendum
election procedure; effect of such election.

§20-11-6. Establishment of state recycling program for solid waste.

§20-11-7. Procurement of recycled products.

§20-11-1. Short title.

1 This article shall be known and cited as the "West
2 Virginia Recycling Act of 1989."

§20-11-2. Legislative findings and purpose

1 The Legislature finds that many citizens desire a
2 recycling program in their county in order to conserve
3 limited natural resources, reduce litter, recycle valuable
4 materials, extend the useful life of solid waste landfills
5 and reduce the need for new landfills.

6 The Legislature further finds that the identification
7 and creation of local, regional, state and national
8 markets for recyclable materials are necessary for the
9 implementation of effective recycling programs.

10 The Legislature further finds that recycling programs
11 can most successfully be established by encouraging the
12 source separation of solid waste.

13 Therefore, it is the purpose of the Legislature to
14 establish goals for the recycling of solid waste; to
15 authorize each county commission, or the citizens of a
16 county by referendum, to adopt a comprehensive
17 recycling program for solid waste; to encourage source

18 separation of solid waste; to increase the purchase of
19 recycled products by the various agencies and instru-
20 mentalities of government; and to educate the public
21 concerning the benefits of recycling.

§20-11-3. Recycling goals.

1 (a) It is the goal of this state to reduce the solid waste
2 stream by thirty percent by the year two thousand.

3 (b) It is an interim goal of this state to reduce the solid
4 waste stream by twenty percent by the first day of
5 January, one thousand nine hundred ninety-four.

§20-11-4. Recycling plans.

1 (a) Each county or regional solid waste authority, as
2 part of the comprehensive litter and solid waste control
3 plan required pursuant to the provisions of section
4 seven, article nine of this chapter, shall prepare and
5 adopt a comprehensive recycling plan to assist in the
6 implementation of the recycling goals in section four of
7 this article.

8 (b) Each recycling plan required by this section shall
9 include, but not be limited to:

10 (1) Designation of the recyclable materials that can be
11 most effectively source separated in the region or
12 county, which shall include at least three recyclable
13 materials; and

14 (2) Designation of potential strategies for the collec-
15 tion, marketing and disposition of designated source
16 separated recyclable materials in each region or county.

**§20-11-5. Establishment of county recycling programs
for solid waste; petition for referendum to be
placed on ballot; referendum election proce-
dure; effect of such election.**

1 (a) A comprehensive recycling program for solid
2 waste may be established in any county of this state by
3 action of a county commission in accordance with the
4 provisions of this section. Such program shall require:

5 (1) That, prior to collection at its source, all solid
6 waste shall be segregated into separate identifiable

7 recyclable materials by each person, partnership,
8 corporation and governmental agency subscribing to a
9 solid waste collection service in the county or transport-
10 ing solid waste to a commercial solid waste facility in
11 the county;

12 (2) That each commercial solid waste facility located
13 in the county and each person engaged in the commer-
14 cial collection, transportation, processing or disposal of
15 solid waste within the county shall accept only such solid
16 waste from which recyclable materials in accordance
17 with said county's comprehensive recycling program
18 have been segregated; and

19 (3) That the provisions of the recycling plan prepared
20 pursuant to section four of this article shall, to the extent
21 practicable, be incorporated in said county's comprehen-
22 sive recycling program.

23 (b) For the purposes of this article, recyclable
24 materials shall include, but not be limited to, steel and
25 bi-metallic cans, aluminum, glass, paper, and such other
26 solid waste materials as may be specified by the county
27 commission with the advice of the county or regional
28 solid waste authority.

29 (c) A referendum to determine whether it is the will
30 of the voters of a county that a comprehensive recycling
31 program for solid waste be established in the county
32 may be held at any regular primary or general election
33 or in conjunction with any other election. Any election
34 at which the question of establishing a policy of
35 comprehensive recycling for solid waste is voted upon
36 shall be held at the voting precincts established for
37 holding primary or general elections. All of the provi-
38 sions of the general election laws, when not in conflict
39 with the provisions of this article, shall apply to voting
40 and elections hereunder, insofar as practicable.

41 (d) The county commission, upon the written petition
42 of qualified voters residing within the county equal to
43 at least five percent of the number of persons who voted
44 in that county in the preceding general election, which
45 petition may be in any number of counterparts, shall
46 order a referendum be placed upon the ballot at the next

47 primary, general or special election to determine
48 whether it is the will of the voters of said county that
49 a policy of comprehensive recycling of solid waste be
50 established in the county.

51 (e) The ballot, or the ballot labels where voting
52 machines are used, shall have printed thereon substan-
53 tially the following:

54 "Shall the County Commission be required to establish
55 a comprehensive recycling program for solid waste in
56 _____ County, West Virginia?

57 ☐ For Recycling

58 ☐ Against Recycling

59 (Place a cross mark in the square opposite your
60 choice.)"

61 (f) If a majority of legal votes cast upon the question
62 be for the establishment of a policy of comprehensive
63 recycling of solid waste, the county commission shall,
64 after the certification of the results of the referendum,
65 thereafter establish by ordinance a comprehensive
66 recycling program for solid waste in the county within
67 ninety days of said certification. If a majority of the
68 legal votes cast upon the question be against the
69 establishment of a policy of comprehensive recycling of
70 solid waste, said policy shall not take effect, but the
71 question may again be submitted to a vote at any
72 subsequent election in the manner herein provided.

73 (g) Any comprehensive recycling program adopted by
74 referendum pursuant to this section may be rescinded
75 only by a subsequent referendum adopted pursuant to
76 the following procedures:

77 (1) The county commission, upon the written petition
78 of qualified voters residing within the county equal to
79 at least five percent of the number of persons who voted
80 in that county in the next preceding general election,
81 which petition may be in any number of counterparts,
82 shall order a referendum be placed upon the ballot at
83 the next primary, general or special election to deter-
84 mine whether it is the will of the voters of said county

85 that the policy of comprehensive recycling of solid waste
86 previously established in the county be terminated.

87 (2) The ballot, or the ballot labels where voting
88 machines are used, shall have printed thereon substan-
89 tially the following:

90 "Shall the County Commission be required to termi-
91 nate the comprehensive recycling program for solid
92 waste in _____
93 County, West Virginia?

94 ☐ Continue Recycling

95 ☐ End Recycling

96 (Place a cross mark in the square opposite your
97 choice.)"

98 (h) If a majority of legal votes cast upon the question
99 be for the termination of a policy of comprehensive
100 recycling of solid waste previously established in the
101 county, the county commission shall, after the certifica-
102 tion of the results of the referendum, thereafter rescind
103 by ordinance the comprehensive recycling program for
104 solid waste in the county within ninety days of said
105 certification. If a majority of the legal votes cast upon
106 the question be for the continuation of the policy of
107 comprehensive recycling of solid waste, said ordinance
108 shall not be rescinded, but the question may again be
109 submitted to a vote at any subsequent election in the
110 manner herein provided.

**§20-11-6. Establishment of state recycling program for
solid waste.**

1 Notwithstanding any provision of this article to the
2 contrary, all agencies and instrumentalities of the state
3 shall implement programs to recycle solid waste. Such
4 programs shall include, but not be limited to, the
5 following:

6 (a) Source separation of at least two recyclable
7 materials;

8 (b) In the absence of a comprehensive county recy-
9 cling plan pursuant to section five of this article,

- 10 collection and transportation of source separated
11 recycled materials to an appropriate location.

§20-11-7. Procurement of recycled products.

1 (a) It is the goal of the Legislature that, to the
2 maximum extent possible, the state purchase recycled
3 products.

4 (b) In furtherance of the aforesaid goal, the director
5 of the department of finance and administration shall
6 develop a procurement plan for recycled paper products.
7 Such plan shall include a review of existing procure-
8 ment policies and a cost analysis of the impacts of such
9 plan. The director shall submit a report on the thirty-
10 first day of January, one thousand nine hundred ninety,
11 summarizing the plan and any recommendations for its
12 implementation. Said report shall be submitted to the
13 governor, speaker of the House of Delegates and
14 president of the Senate.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

**ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE
COMMISSION.**

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

§24-2-1f. Jurisdiction of commission over solid waste facilities.

§24-2-4b. Procedures for changing rates of electric, natural gas, telephone
cooperatives and municipally operated public utilities.

**§24-2-1. Jurisdiction of commission; waiver of
jurisdiction.**

1 The jurisdiction of the commission shall extend to all
2 public utilities in this state, and shall include any utility
3 engaged in any of the following public services:

4 Common carriage of passengers or goods, whether by
5 air, railroad, street railroad, motor or otherwise, by
6 express or otherwise, by land, water or air, whether
7 wholly or partly by land, water or air; transportation of
8 oil, gas or water by pipeline; transportation of coal and
9 its derivatives and all mixtures and combinations
10 thereof with other substances by pipeline; sleeping car
11 or parlor car services; transmission of messages by
12 telephone, telegraph or radio; generation and transmis-
13 sion of electrical energy by hydroelectric or other

14 utilities for service to the public, whether directly or
15 through a distributing utility; supplying water, gas or
16 electricity, by municipalities or others; sewer systems
17 servicing twenty-five or more persons or firms other
18 than the owner of the sewer systems; any public service
19 district created under the provisions of article thirteen-
20 a, chapter sixteen of this code; toll bridges, wharves,
21 ferries; solid waste facilities, pursuant to section one-f
22 of this article; and any other public service: *Provided*,
23 That natural gas producers who provide natural gas
24 service to not more than twenty-five residential custo-
25 mers are exempt from the jurisdiction of the commission
26 with regard to the provisions of such residential service:
27 *Provided, however*, That upon request of any of the
28 customers of such natural gas producers, the commis-
29 sion may, upon good cause being shown, exercise such
30 authority as the commission may deem appropriate over
31 the operation, rates and charges of such producer and
32 for such length of time as the commission may consider
33 to be proper: *Provided further*, That the jurisdiction the
34 commission may exercise over the rates and charges of
35 municipally operated public utilities is limited to that
36 authority granted the commission in section four-b of
37 this article: *And provided further*, That the decision-
38 making authority granted to the commission in sections
39 four and four-a of this article shall, in respect to an
40 application filed by a public service district, be
41 delegated to a single hearing examiner appointed from
42 the commission staff, which hearing examiner shall be
43 authorized to carry out all decision-making duties
44 assigned to the commission by said sections, and to issue
45 orders having the full force and effect of orders of the
46 commission.

47 The commission may, upon application, waive its
48 jurisdiction and allow a utility operating in an adjoining
49 state to provide service in West Virginia when:

50 (1) An area of West Virginia cannot be practicably
51 and economically served by a utility licensed to operate
52 within the state of West Virginia;

53 (2) Said area can be provided with utility service by

54 a utility which operates in a state adjoining West
55 Virginia;

56 (3) The utility operating in the adjoining state is
57 regulated by a regulatory agency or commission of the
58 adjoining state; and

59 (4) The number of customers to be served is not
60 substantial.

61 The rates the out-of-state utility charges West Virgi-
62 nia customers shall be the same as the rate the utility
63 is duly authorized to charge in the adjoining
64 jurisdiction.

65 The commission, in the case of any such utility, may
66 revoke its waiver of jurisdiction for good cause.

§24-2-1f. Jurisdiction of commission over solid waste facilities.

1 Effective the first day of July, one thousand nine
2 hundred eighty-nine, in addition to all other powers and
3 duties of the commission as defined in this article, the
4 commission shall establish, prescribe and enforce rates
5 and fees charged by commercial solid waste facilities,
6 as defined in subsection (b), section two, article nine,
7 chapter twenty of this code: *Provided*, That an owner of
8 a commercial solid waste facility that is not in existence
9 on the effective date of this article that has executed or
10 executes an agreement with a county commission or
11 county or regional solid waste authority, establishing
12 disposal rates or fees for said county or region, shall not
13 be subject to the requirements of this chapter upon the
14 approval of said disposal rates or fees by the commission
15 for the term of such agreement: *Provided, however*, That
16 any revisions to rates or fees or any renewals or
17 extensions of said agreement would be similarly subject
18 to such approval. The purpose of this provision is to
19 encourage the development of solid waste disposal
20 facilities which meet the environmental standards and
21 requirements of article five-f of chapter twenty of this
22 code and which provide for quality waste disposal for
23 the county or region at reasonable rates. If any
24 provisions of this section shall be held unconstitutional,

25 all commercial solid waste facilities shall be subject to
26 the jurisdiction of the commission as provided herein.

**§24-2-4b. Procedures for changing rates of electric,
natural gas, telephone cooperatives and
municipally operated public utilities.**

1 (a) Electric cooperatives, natural gas cooperatives,
2 telephone cooperatives and municipally operated public
3 utilities, except for municipally operated commercial
4 solid waste facilities as defined in section two-h, article
5 five-f, chapter twenty of this code, are not subject to the
6 rate approval provisions of section four or four-a of this
7 article but are subject to the limited rate provisions of
8 this section.

9 (b) All rates and charges set by electric cooperatives,
10 natural gas cooperatives, telephone cooperatives and
11 municipally operated public utilities shall be just,
12 reasonable, applied without unjust discrimination or
13 preference and based primarily on the costs of providing
14 these services. Such rates and charges shall be adopted
15 by the electric, natural gas or telephone cooperative's
16 governing board and in the case of the municipally
17 operated public utility by municipal ordinance to be
18 effective not sooner than forty-five days after adoption:
19 *Provided*, That notice of intent to effect a rate change
20 shall be specified on the monthly billing statement of the
21 customers of such utility for the month next preceding
22 the month in which the rate change is to become
23 effective or the utility shall give its customers, and in
24 the case of a cooperative, its customers, members and
25 stockholders, such other reasonable notices as will allow
26 filing of timely objections to such rate change. Such
27 rates and charges shall be filed with the commission
28 together with such information showing the basis of
29 such rates and charges and such other information as
30 the commission considers necessary. Any change in such
31 rates and charges with updated information shall be
32 filed with the commission. If a petition, as set out in
33 subdivision (1), (2) or (3), subsection (c) of this section,
34 is received and the electric cooperative, natural gas
35 cooperative, telephone cooperative, or municipality has
36 failed to file with the commission such rates and charges

37 with such information showing the basis of rates and
38 charges and such other information as the commission
39 considers necessary, the suspension period limitation of
40 one hundred twenty days and the one hundred day
41 period limitation for issuance of an order by a hearing
42 examiner, as contained in subsections (d) and (e) of this
43 section, is tolled until the necessary information is filed.
44 The electric cooperative, natural gas cooperative,
45 telephone cooperative or municipality shall set the date
46 when any new rate or charge is to go into effect.

47 (c) The commission shall review and approve or
48 modify such rates upon the filing of a petition within
49 thirty days of the adoption of the ordinance or resolution
50 changing said rates or charges by:

51 (1) Any customer aggrieved by the changed rates or
52 charges who presents to the commission a petition
53 signed by not less than twenty-five percent of the
54 customers served by such municipally operated public
55 utility, or twenty-five percent of the membership of the
56 electric, natural gas or telephone cooperative residing
57 within the state; or

58 (2) Any customer who is served by a municipally
59 operated public utility and who resides outside the
60 corporate limits and who is affected by the change in
61 said rates or charges and who presents to the commis-
62 sion a petition alleging discrimination between custo-
63 mers within and without the municipal boundaries. Said
64 petition shall be accompanied by evidence of discrimi-
65 nation; or

66 (3) Any customer or group of customers who are
67 affected by said change in rates who reside within the
68 municipal boundaries and who present a petition to the
69 commission alleging discrimination between said
70 customer or group of customers and other customers of
71 the municipal utility. Said petition shall be accompanied
72 by evidence of discrimination.

73 (d) (1) The filing of a petition with the commission
74 signed by not less than twenty-five percent of the
75 customers served by the municipally operated public
76 utility, or twenty-five percent of the membership of the

77 electric, natural gas or telephone cooperative residing
78 within the state, under subdivision (1), subsection (c) of
79 this section, shall suspend the adoption of the rate
80 change contained in the ordinance or resolution for a
81 period of one hundred twenty days from the date said
82 rates or charges would otherwise go into effect, or until
83 an order is issued as provided herein.

84 (2) Upon sufficient showing of discrimination by
85 customers outside the municipal boundaries, or a
86 customer or a group of customers within the municipal
87 boundaries, under a petition filed under subdivision
88 (2) or (3), subsection (c) of this section, the commission
89 shall suspend the adoption of the rate change contained
90 in the ordinance for a period of one hundred twenty days
91 from the date said rates or charges would otherwise go
92 into effect or until an order is issued as provided herein.

93 (e) The commission shall forthwith appoint a hearing
94 examiner from its staff to review the grievances raised
95 by the petitioners. Said hearing examiner shall conduct
96 a public hearing, and shall within one hundred days
97 from the date the said rates or charges would otherwise
98 go into effect, unless otherwise tolled as provided in
99 subsection (b) of this section, issue an order approving,
100 disapproving or modifying, in whole or in part, the rates
101 or charges imposed by the electric, natural gas or
102 telephone cooperative or by the municipally operated
103 public utility pursuant to this section.

104 (f) Upon receipt of a petition for review of the rates
105 under the provisions of subsection (c) of this section, the
106 commission may exercise the power granted to it under
107 the provisions of section three of this article. The
108 commission may determine the method by which such
109 rates are reviewed and may grant and conduct a de novo
110 hearing on the matter if the customer, electric, natural
111 gas or telephone cooperative or municipality requests
112 such a hearing.

113 (g) The commission may, upon petition by a munic-
114 ipality or electric, natural gas or telephone cooperative,
115 allow an interim or emergency rate to take effect,
116 subject to future modification, if it is determined that

117 such interim or emergency rate is necessary to protect
118 the municipality from financial hardship and if that
119 financial hardship is attributable solely to the purchase
120 of the utility commodity sold. In such cases, the
121 commission may waive the forty-five-day waiting period
122 provided for in subsection (b) of this section and the one
123 hundred twenty-day suspension period provided for in
124 subsection (d) of this section.

125 (h) Notwithstanding any other provision, the commis-
126 sion shall have no authority or responsibility with
127 regard to the regulation of rates, income, services or
128 contracts by municipally operated public utilities for
129 services which are transmitted and sold outside of the
130 state of West Virginia.

CHAPTER 24A. MOTOR CARRIERS OF PASSENGERS AND PROPERTY FOR HIRE.

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

§24A-2-4a. Motor carriers transporting solid waste; pass through of landfill tip fees as rate surcharge.

1 Any common carrier transporting solid waste in this
2 state pursuant to authority granted under section five,
3 article two, chapter twenty-four-a of the code of West
4 Virginia, one thousand nine hundred thirty-one, as
5 amended, may make application to the commission for
6 approval of a rate surcharge to pass through any
7 increase in the disposal rate charged by the landfill at
8 which solid waste is disposed by the motor carrier,
9 commonly known as the tip fee, to commercial and
10 residential customers, including increases which are the
11 direct result of fees, charges, taxes, or any other
12 assessment imposed upon the landfill by a governmental
13 body. The commission shall within fourteen days of
14 receipt of said application notify the motor carrier of
15 approval of the requested rate surcharge, or approval
16 of a rate surcharge other than in the amount requested
17 and the reason therefor. The effective date of the
18 approved rate surcharge shall be the same date as the
19 effective date of the increase in the tip fee to which the

20 surcharge relates; except that in the event the applica-
21 tion for approval of the rate surcharge is received by
22 the commission more than sixty days after the effective
23 date of the tip fee increase, then the effective date of the
24 approved rate surcharge shall be the date said applica-
25 tion was received by the commission.

26 The commission shall immediately promulgate emer-
27 gency rules which set forth the procedures for the filing
28 of the tip fee rate surcharge application. It is the
29 purpose of this statute to provide an expedited process
30 which will allow the subject motor carriers to pass
31 through tip fee increases to all customers. Only that data
32 necessary to review in accordance with this statute may
33 be required by the commission to be submitted by the
34 motor carrier.

CHAPTER 185

(S. B. 249—Originating in the Committee on Finance)

[Passed February 28, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirty, article fifteen, chapter eleven of said code, all relating to authorizing the governor to incur indebtedness to redeem previous liabilities for the ordinary expenses of the state; specifying maximum amount of indebtedness and setting the time of repayment; providing the manner of issuance of such indebtedness; authorizing the governor to enter into trust agreements and covenants and to contract for professional and technical services in connection with such issuance; specifying that evidences of such indebtedness shall be negotiable instruments; providing for exemption of principal and interest on such indebtedness from taxation by the state and its political subdivisions; specifying that such indebtedness shall not be an obligation of the state; creating special fund for receipt of proceeds of such issuance and providing the purpose

for which such proceeds may be expended; creating a special fund for repayment of principal and interest on such indebtedness; pledging and dedicating certain portion of consumers sales tax for said repayment; and authorizing repayments from such fund to the occupational pneumoconiosis fund.

Be it enacted by the Legislature of West Virginia:

That section nineteen, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section thirty, article fifteen, chapter eleven of said code be amended and reenacted, all to read as follows:

Chapter

5. **General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, etc.**

11. **Taxation.**

**CHAPTER 5. GENERAL POWERS AND
AUTHORITY OF THE GOVERNOR, SECRETARY
OF STATE AND ATTORNEY GENERAL;
BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 1. THE GOVERNOR.

§5-1-19. Temporary loans.

- 1 The governor may raise, from time to time, by
2 temporary loans, not having over eighteen months to
3 run, nor bearing a greater interest than two cents per
4 hundred dollars per day, so much as may be needed to
5 supply the wants of the treasury: *Provided*, That the
6 governor may, on or before the thirtieth day of June, one
7 thousand nine hundred eighty-nine, issue notes, revenue
8 bonds, certificates or other evidences of indebtedness of
9 the state as provided in this section to redeem previous
10 liabilities for the ordinary expenses of the state. Such
11 notes, revenue bonds, certificates or other evidences of
12 indebtedness may not exceed in the aggregate the
13 principal sum of one hundred thirty-five million dollars
14 and shall provide for repayment of principal and

15 interest in full no later than the thirtieth day of June,
16 one thousand nine hundred ninety-two.

17 The issuance of such notes, revenue bonds, certificates
18 or other evidences of indebtedness shall be authorized
19 by an executive order, and such notes, revenue bonds,
20 certificates or other evidences of indebtedness shall be
21 payable in such medium of payment and at such place
22 or places, within or without the state, and may have
23 such other terms and conditions as the governor
24 determines. Such notes, revenue bonds, certificates or
25 other evidences of indebtedness shall be signed by the
26 governor, under the great seal of the state, and attested
27 by the secretary of state. The governor and secretary of
28 state may sign and attest such notes, revenue bonds,
29 certificates or other evidences of indebtedness by
30 facsimile signature. Such notes, revenue bonds, certifi-
31 cates or other evidences of indebtedness may be issued
32 at such interest rate or rates as the governor deems
33 reasonable and necessary to serve the best interests of
34 the state and to enhance their marketability. Such notes,
35 revenue bonds, certificates or other evidences of
36 indebtedness shall be sold in such manner and on such
37 terms and conditions as the governor may determine to
38 be in the best interests of the state. Any revenue bonds
39 issued hereunder shall be in registered form.

40 The governor may enter into trust agreements with
41 banks or trust companies, within or without the state,
42 and in such trust agreements or the executive order
43 authorizing the issuance of such notes, revenue bonds,
44 certificates or other evidences of indebtedness he may
45 enter into valid and legally binding covenants with the
46 holders of such notes, revenue bonds, certificates or
47 other evidences of indebtedness as to the custody,
48 safekeeping and disposition of the moneys within the
49 "Fiscal Responsibility Fund" hereinafter created and as
50 to any other matters or provisions which are deemed
51 necessary or advisable by the governor to serve the best
52 interests of the state and to enhance the marketability
53 of such notes, revenue bonds, certificates or other
54 evidences of indebtedness. The governor may contract
55 for the provision of such professional and technical

56 services as he may deem necessary or advisable in
57 connection with the issuance of such notes, revenue
58 bonds, certificates or other evidences of indebtedness,
59 including without limitation accounting, actuarial,
60 consulting, financial and legal services. The fees and
61 expenses of such professionals and any and all other
62 costs associated with the issuance of such notes, revenue
63 bonds, certificates or other evidences of indebtedness
64 shall be payable from the proceeds of such issuance.

65 Such notes, revenue bonds, certificates or other
66 evidences of indebtedness shall be and constitute
67 negotiable instruments under the Uniform Commercial
68 Code of this state; shall, together with the interest
69 thereon, be exempt from all taxation by the state of
70 West Virginia, or by any county, school district,
71 municipality or political subdivision thereof; and such
72 notes, revenue bonds, certificates or other evidences of
73 indebtedness shall not be deemed to be general obliga-
74 tions or debts of the state within the meaning of the
75 constitution of the state of West Virginia, and the credit
76 or the taxing power of the state shall not be pledged
77 therefor, but such notes, revenue bonds, certificates or
78 other evidences of indebtedness shall be payable only
79 from the revenue pledged therefor as provided in this
80 section.

81 The proceeds of any indebtedness issued hereunder
82 shall be paid into a special fund hereby created in the
83 state treasury named "The Fund for Redemption of
84 Previous Liabilities". The governor may make disburse-
85 ments from this fund to pay the reasonable fees,
86 expenses and costs associated with the issuance of the
87 indebtedness authorized by this section, and such other
88 disbursements as he deems necessary to redeem pre-
89 vious liabilities for the ordinary expenses of the state.

90 There is hereby created in the state treasury a special
91 fund named the "Fiscal Responsibility Fund" into which
92 shall be paid on and after the first day of July, one
93 thousand nine hundred eighty-nine, the amounts as and
94 when specified in section thirty, article fifteen, chapter
95 eleven of this code. All moneys deposited in said fund
96 are pledged to the repayment of principal and interest

97 on any notes, revenue bonds, certificates or other
98 evidences of indebtedness issued pursuant to this
99 section. A lien on the fund shall exist in favor of the
100 holders of any notes, revenue bonds, certificates or other
101 evidences of indebtedness issued under this section to
102 the extent of such indebtedness. Any moneys not needed
103 for repayment of principal and interest on and costs
104 associated with the notes, revenue bonds, certificates or
105 other evidences of indebtedness authorized by this
106 section may be used to repay principal and interest on
107 moneys previously transferred from the occupational
108 pneumoconiosis fund pursuant to section eight-a, article
109 four-b, chapter twenty-three of this code. Repayment to
110 the occupational pneumoconiosis fund, if any, shall be
111 made into the special account created in the state
112 treasury by said section eight-a. Any amounts remain-
113 ing in the "Fiscal Responsibility Fund" after provisions
114 for repayment of indebtedness issued pursuant to this
115 section and not otherwise used for repayment of moneys
116 previously transferred from the occupational pneumoco-
117 niosis fund shall be transferred to the general revenue
118 fund of this state on or before the first day of August,
119 one thousand nine hundred ninety-two.

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-30. Proceeds of tax; dedication of certain revenues.

1 The proceeds of the tax imposed by this article shall
2 be deposited in the general revenue fund of the state:
3 *Provided*, That beginning the first day of July, one
4 thousand nine hundred eighty-nine, and continuing each
5 month thereafter through the last day of July, one
6 thousand nine hundred ninety-two, the first five million
7 dollars of proceeds of this tax for each month shall be
8 paid into the "Fiscal Responsibility Fund" created by
9 section nineteen, article one, chapter five of this code
10 and used for the purposes specified therein: *Provided*,
11 *however*, That for the fiscal year one thousand nine
12 hundred eighty-nine, one million dollars of the proceeds
13 of the tax imposed by this article shall be dedicated to

14 the cancer center at West Virginia University and eight
15 million dollars of the proceeds of the tax imposed by this
16 article shall be dedicated to the "Higher Education
17 Salary Fund" which is hereby created in the state
18 treasury. All moneys credited to the higher education
19 salary fund shall be expended by the board of regents
20 for further implementation of the fee schedules estab-
21 lished in articles twenty-two and twenty-six-b, chapter
22 eighteen of this code.

CHAPTER 186

(Com. Sub. for H. B. 2051—By Delegate Love)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to scheduling governmental agencies or programs for termination pursuant to the West Virginia sunset law.

Be it enacted by the Legislature of West Virginia:

That section four, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of governmental entities or programs.

1 The following governmental entities and programs
2 shall be terminated on the date indicated but no
3 governmental entity or program shall be terminated
4 under this article unless a performance audit has been
5 conducted of such entity or program, except as autho-
6 rized under section fourteen of this article:

7 (1) On the first day of July, one thousand nine
8 hundred eighty-one: Judicial council of West Virginia;
9 motor vehicle certificate appeal board; child welfare
10 licensing board.

11 (2) On the first day of July, one thousand nine
12 hundred eighty-two: Ohio River basin commission;
13 commission on postmortem examination; state commis-
14 sion on manpower, training and technology.

15 (3) On the first day of July, one thousand nine
16 hundred eighty-three: Anatomical board; economic
17 opportunity advisory committee; community develop-
18 ment authority board.

19 (4) On the first day of July, one thousand nine
20 hundred eighty-four: The following programs of the
21 department of natural resources: Rabies control, work
22 incentive program; West Virginia alcoholic beverage
23 control licensing advisory board.

24 (5) On the first day of July, one thousand nine
25 hundred eighty-five: Beautification commission; labor
26 management advisory council.

27 (6) On the first day of July, one thousand nine
28 hundred eighty-six: Health resources advisory council.

29 (7) On the first day of July, one thousand nine
30 hundred eighty-seven: Civil service commission advisory
31 board; council of finance and administration; and the
32 motorcycle safety standards and specifications board.

33 (8) On the first day of July, one thousand nine
34 hundred eighty-eight: Veteran's council; labor manage-
35 ment relations board; records management and preser-
36 vation advisory committee; minimum wage rate board;
37 commission on mass transportation; real estate commis-
38 sion; the department of labor; the division of archives
39 and history of the department of culture and history;
40 and the public employees insurance board.

41 (9) On the first day of July, one thousand nine
42 hundred eighty-nine: Mental retardation advisory
43 committee; board of school finance; veteran's affairs
44 advisory council; reclamation commission.

45 (10) On the first day of July, one thousand nine
46 hundred ninety: Consumer affairs advisory council;
47 savings and loan association; forest industries industrial
48 foundation; U.S. geological survey program within the

49 department of natural resources; drivers' license
50 advisory board; women's commission; office of workers'
51 compensation commissioner; child advocate office,
52 department of human services; board of investments;
53 and the department of corrections.

54 (11) On the first day of July, one thousand nine
55 hundred ninety-one: State advisory council of the
56 department of employment security; department of
57 human services; oil and gas conservation commission;
58 the family law masters system; state lottery commission;
59 the department of commerce; West Virginia health care
60 cost review authority; the following divisions or pro-
61 grams of the department of agriculture: Soil conserva-
62 tion committee, rural resource division, meat inspection
63 program; interagency committee on pesticides; pesti-
64 cides board of review; and the geological and economic
65 survey.

66 (12) On the first day of July, one thousand nine
67 hundred ninety-two: State water resources board; water
68 resources division, department of natural resources;
69 whitewater advisory board; state board of risk and
70 insurance management; West Virginia's membership in
71 the interstate commission on the Potomac River basin;
72 board of banking and financial institutions; state
73 building commission; the capitol building and grounds
74 preservation commission; the board of examiners in
75 counseling; and the public service commission: *Provided,*
76 That in the case of the public service commission, the
77 performance and fiscal audit required by this article
78 shall be completed and transmitted to the joint commit-
79 tee on government and finance on or before the first day
80 of July, one thousand nine hundred ninety-one, in order
81 that the joint committee or its designated subcommittee
82 may review the audit pursuant to the provisions of
83 section one, article one, chapter twenty-four of this code.

84 (13) On the first day of July, one thousand nine
85 hundred ninety-three: Commission on uniform state
86 laws; state structural barriers compliance board; and
87 the oil and gas inspectors examining board.

88 (14) On the first day of July, one thousand nine

- 89 hundred ninety-four: Ohio River valley water sanitation
90 commission; and the southern regional education board.
- 91 (15) On the first day of July, one thousand nine
92 hundred ninety-five: Emergency medical services
93 advisory council; commission on charitable organiza-
94 tions; information system advisory commission; and the
95 board of social work examiners.

CHAPTER 187

(Com. Sub. for H. B. 2327—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed April 8, 1989; in effect June 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact article sixteen-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia parkways, economic development and tourism authority; dissolving and terminating the West Virginia turnpike commission as of the first day of June, one thousand nine hundred eighty-nine, and creating as of the same date the West Virginia parkways, economic development and tourism authority; amending and reenacting existing provisions relating to turnpike commission; providing for construction, operation and financing of parkway, economic development and tourism projects; declaring construction of modern highways and promotion and enhancement of tourism and economic development in state as goals of authority, including, but not limited to, development, construction, improvement and enhancement of state parks and tourist facilities and attractions; providing that bonds issued by authority not debt of state or any political subdivision thereof; providing for composition of authority, terms of members and procedural matters relating thereto; transferring powers, obligations, liabilities, duties, functions, personnel, property and other assets of turnpike commission to authority; defining certain terms used in article; setting forth powers of authority including, but not limited to, power

to issue revenue and revenue refunding bonds to finance projects, to construct, reconstruct, improve, repair, maintain and operate projects, to fix and revise tolls, rents, fees and other charges, and to make and enter into contracts and agreements necessary or incidental to the performance of its duties; authorizing construction of grade separations at intersection of any project; authorizing acquisition of land, property, rights and other interests in land as authority may deem necessary; authorizing condemnation proceedings in certain circumstances; authorizing issuance of revenue bonds generally for purposes of paying all or any part of cost of projects, and specifying form and terms thereof and rights of holders thereof; authorizing issuance of revenue bonds to pay cost of West Virginia turnpike, including repayment to state of funds owed to it in connection with upgrading turnpike to federal interstate standards and, to the extent permitted by federal law, paying all or any part of the cost of related parkway projects, and limiting issuance of such bonds to an aggregate principal amount of eighty-three million dollars; specifying uses of bond proceeds; providing that bonds may be secured by trust agreement with any trust company and certain banks; providing that authority may fix, revise, charge and collect tolls, rents, fees, charges and other revenues and requiring competitive bidding on certain contracts; exempting authority from payment of taxes; designating all money received by authority as trust funds; setting forth bondholder and trustee remedies; requiring that all private property damaged or destroyed by authority be repaired or restored by authority from its funds; authorizing commissioner of highways department to expend funds to study feasibility of projects and reimbursing commissioner from bond proceeds; establishing penalty for defrauding authority; providing for cessation of tolls under certain circumstances; requiring removal of certain tolls on turnpike by specified date; providing that parkway projects shall constitute part of state road system; authorizing issuance of revenue refunding bonds generally to refund outstanding bonds of authority and, if deemed advisable by authority, to pay all or any part

of the cost of new project or projects, and to repay to state funds owed to it in connection with upgrading turnpike to federal interstate standards, and providing form and terms thereof and rights of holders thereof; authorizing issuance of special revenue refunding bonds in an aggregate principal amount not to exceed sixty million dollars to eliminate outstanding debt on West Virginia turnpike and, to the extent permissible under federal law, to pay all or any part of the cost of additional parkway projects or to repay to state funds owed to it in connection with upgrading turnpike to federal interstate standards; establishing special highway fund, to be separate and distinct from state road fund and general revenues, consisting of funds disbursed by the authority to department of highways in repayment of state funds used to upgrade West Virginia turnpike, and all appropriations, grants, gifts and other contributions to fund, and all interest earned on moneys held in fund; authorizing governor to transfer up to thirty-five million dollars from special highway fund to economic development authority insurance fund, and specifying that balance of special highway fund to be subject to legislative appropriation; providing that act to be deemed to provide additional and alternative methods for accomplishing purposes thereof; authorizing issuance of special obligation bonds; requiring preparation of annual report of financial condition and operations; providing for development of exit awareness signs; providing severability clause; and providing effective date of first day of June, one thousand nine hundred eighty-nine.

Be it enacted by the Legislature of West Virginia:

That article sixteen-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY.

- §17-16A-1. Constructing, operating, financing, etc., parkway, economic development and tourism projects.
- §17-16A-2. Parkway revenue bonds and revenue refunding bonds not debt of state or political subdivisions; statement on bonds.

- §17-16A-3. Dissolution and termination of West Virginia turnpike commission; West Virginia parkways, economic development and tourism authority generally.
- §17-16A-4. Transfer of powers, duties, functions, assets and liabilities of turnpike commission to parkways authority.
- §17-16A-5. Definitions.
- §17-16A-6. Parkway authority's powers.
- §17-16A-7. Parkway authority's incidental powers.
- §17-16A-8. Acquisition of land, property, easements, etc.
- §17-16A-9. Condemnation of property.
- §17-16A-10. Parkway revenue bonds—Generally.
- §17-16A-11. Parkway revenue bonds—West Virginia Turnpike; related projects.
- §17-16A-12. Parkway revenue bonds—Trust agreement.
- §17-16A-13. Tolls, rents, fees, charges and revenues; competitive bidding on contracts.
- §17-16A-14. Trust funds.
- §17-16A-15. Remedies.
- §17-16A-16. Exemption from taxation.
- §17-16A-17. Repair, etc., of damaged property; conveyances, etc., by counties, cities, etc., to parkways authority; maintenance and policing of projects; defrauding parkways authority; evading payment of tolls, rents, fees or charges; trespassing.
- §17-16A-18. Cessation of tolls.
- §17-16A-19. Preliminary expenses.
- §17-16A-20. Parkway projects part of state road system; pledge of limited funds by state department of highways in case of deficit.
- §17-16A-21. Parkway revenue refunding bonds—Generally.
- §17-16A-22. Parkway revenue refunding bonds—West Virginia Turnpike.
- §17-16A-23. Special highway fund; appropriations from fund.
- §17-16A-24. Article deemed to provide additional and alternative methods.
- §17-16A-25. Additional powers of parkways authority; issuance of special obligation bonds.
- §17-16A-26. Annual report.
- §17-16A-27. Exit awareness signs.
- §17-16A-28. Severability.
- §17-16A-29. Effective date.

§17-16A-1. Constructing, operating, financing, etc., parkway, economic development and tourism projects.

- 1 In order to remove the present handicaps and hazards
- 2 on the congested highways and roads in the state of West
- 3 Virginia, to facilitate vehicular traffic throughout the
- 4 state, to promote and enhance the tourism industry and
- 5 to develop and improve tourist facilities and attractions
- 6 in the state, to promote the agricultural, economic and
- 7 industrial development of the state, and to provide for

8 the construction of modern express highways including
9 center divisions, ample shoulder widths, long sight
10 distances, the bypassing of cities, multiple lanes in each
11 direction and grade separations at all intersections with
12 other highways and railroads, to provide for the
13 development, construction, improvement and enhance-
14 ment of state parks, tourist facilities and attractions,
15 and to provide for the improvement and enhancement
16 of state parks presently existing, the West Virginia
17 parkways, economic development and tourism authority
18 (hereinafter created) is hereby authorized and empow-
19 ered to construct, reconstruct, improve, maintain, repair
20 and operate parkway projects, economic development
21 projects and tourism projects (as those terms are
22 hereinafter defined in section five of this article) at such
23 locations as shall be approved by the state department
24 of transportation, and to issue parkway revenue bonds
25 of the state of West Virginia, payable solely from
26 revenues, to pay the cost of such projects.

**§17-16A-2. Parkway revenue bonds and revenue refund-
ing bonds not debt of state or political
subdivisions; statement on bonds.**

1 Parkway revenue bonds and revenue refunding bonds
2 issued under the provisions of this article shall not be
3 deemed to constitute a debt of the state or of any
4 political subdivision thereof or a pledge of the faith and
5 credit of the state or of any such political subdivision,
6 but such bonds shall be payable solely from the funds
7 herein provided therefor from revenues. All such
8 parkway revenue bonds and revenue refunding bonds
9 shall contain on the face thereof a statement to the effect
10 that neither the state nor any political subdivision
11 thereof shall be obligated to pay the same or the interest
12 thereon except from revenues of the project or projects
13 for which they are issued and that neither the faith and
14 credit nor the taxing power of the state or any political
15 subdivision thereof is pledged to the payment of the
16 principal of or the interest on such bonds.

**§17-16A-3. Dissolution and termination of West Virginia
turnpike commission; West Virginia park-
ways, economic development and tourism
authority generally.**

1 On and after the first day of June, one thousand nine
2 hundred eighty-nine, the West Virginia turnpike
3 commission is hereby abolished in all respects, and there
4 is hereby created the "West Virginia Parkways, Eco-
5 nomic Development and Tourism Authority," and by
6 that name the parkways authority may sue and be sued
7 and plead and be impleaded. The parkways authority is
8 hereby constituted an agency of the state, and the
9 exercise by the parkways authority of the powers
10 conferred by this article in the construction, reconstruc-
11 tion, improvement, operation and maintenance of
12 parkway, economic development and tourism projects
13 shall be deemed and held to be an essential governmen-
14 tal function of the state.

15 The West Virginia parkways, economic development
16 and tourism authority shall consist of seven members,
17 including the transportation secretary, who shall serve
18 as chairman of the parkways authority, and six
19 members, including no less than one from each of the
20 counties which have land bordering parkway projects,
21 appointed by the governor, by and with the advice and
22 consent of the Senate. The appointed members shall be
23 residents of the state, and shall have been qualified
24 electors therein for a period of at least one year next
25 preceding their appointment. Upon the effective date of
26 this legislation, the governor shall forthwith appoint six
27 members of the parkways authority for staggered
28 terms. The terms of the parkways authority members
29 first taking office on or after the effective date of this
30 legislation shall expire as designated by the governor at
31 the time of the nomination, one at the end of the first
32 year, one at the end of the second year, one at the end
33 of the third year, one at the end of the fifth year, one
34 at the end of the sixth year, and one at the end of the
35 seventh year, after the first day of June, one thousand
36 nine hundred eighty-nine. As these original appoint-
37 ments expire, each subsequent appointment shall be for
38 a full eight-year term. Any member whose term has
39 expired shall serve until his successor has been duly
40 appointed and qualified. Any person appointed to fill a
41 vacancy shall serve only for the unexpired term. Any

42 member shall be eligible for reappointment. The term
43 of any person serving as a member of the West Virginia
44 turnpike commission immediately preceding the effective
45 date of this legislation shall cease and otherwise
46 expire upon such effective date: *Provided*, That any such
47 member shall be eligible for reappointment. Each
48 appointed member of the parkways authority before
49 entering upon his duties shall take an oath as provided
50 by section five of article four of the Constitution of the
51 state of West Virginia.

52 The parkways authority shall elect one of the ap-
53 pointed members as vice chairman, and shall also elect
54 a secretary and treasurer who need not be members of
55 the parkways authority. Four members of the parkways
56 authority shall constitute a quorum and the vote of a
57 majority of members present shall be necessary for any
58 action taken by the parkways authority. No vacancy in
59 the membership of the parkways authority shall impair
60 the right of a quorum to exercise all the rights and
61 perform all the duties of the parkways authority. The
62 parkways authority shall meet at least monthly and
63 either the chairman or any four members shall be
64 empowered to call special meetings for any purpose or
65 purposes: *Provided*, That notice of any such meeting
66 shall be given to all members of the parkways authority
67 not less than ten days prior to said special meetings.

68 Before the issuance of any parkway revenue bonds or
69 revenue refunding bonds under the provisions of this
70 article, each appointed member of the parkways
71 authority shall execute a surety bond in the penal sum
72 of twenty-five thousand dollars and the secretary and
73 treasurer shall execute a surety bond in the penal sum
74 of fifty thousand dollars, each such surety bond to be
75 conditioned upon the faithful performance of the duties
76 of his office, to be executed by a surety company
77 authorized to transact business in the state of West
78 Virginia as surety and to be approved by the governor
79 and filed in the office of the secretary of state.

80 The members of the parkways authority shall not be
81 entitled to compensation for their services, but each
82 member shall be reimbursed for his actual expenses

83 necessarily incurred in the performance of his duties.
84 All expenses incurred in carrying out the provisions of
85 this article shall be payable solely from funds provided
86 under the authority of this article and no liability or
87 obligation shall be incurred by the parkways authority
88 hereunder beyond the extent to which moneys shall have
89 been provided under the authority of this article.

**§17-16A-4. Transfer of powers, duties, functions, assets
and liabilities of turnpike commission to
parkways authority.**

1 (a) The duties, powers and functions of the West
2 Virginia turnpike commission are hereby transferred to
3 the parkways authority.

4 (b) All obligations, indebtedness and other liabilities
5 of, and all rights, assets and other property owned by
6 or used in the administration of, the West Virginia
7 turnpike commission as of the first day of June, one
8 thousand nine hundred eighty-nine, and all personnel of
9 said turnpike commission as of said date are hereby
10 assumed by and transferred to the parkways authority,
11 which is hereby constituted the successor in interest to
12 said commission in all respects.

13 (c) All books, papers, maps, charts, plans, literature
14 and other records in the possession of the West Virginia
15 turnpike commission as of the first day of June, one
16 thousand nine hundred eighty-nine, shall be delivered or
17 turned over to the parkways authority.

18 (d) The unexpended balance of appropriations or other
19 funds available for use of the West Virginia turnpike
20 commission as of the first day of June, one thousand nine
21 hundred eighty-nine, is hereby transferred to the
22 parkways authority for the use of the parkways author-
23 ity.

§17-16A-5. Definitions.

1 As used in this article, the following words and terms
2 shall have the following meanings, unless the context
3 shall indicate another or different meaning or intent:

4 (a) The words "parkways authority" mean the West
5 Virginia parkways, economic development and tourism
6 authority created by section three of this article, or if
7 said parkways authority shall be abolished, the board,
8 body, commission or authority succeeding to the
9 principal functions thereof or to whom the powers given
10 by this article to the parkways authority shall be given
11 by law.

12 (b) The words "parkway project" mean any express-
13 way, turnpike, trunkline, feeder road, state local service
14 road or park and forest road which the parkways
15 authority may at any time determine to construct,
16 reconstruct, maintain, improve or repair under the
17 provisions of this article, or any expressway, turnpike
18 or other road constructed by the West Virginia turnpike
19 commission pursuant to the authority granted to it
20 under the laws of this state prior to the first day of June,
21 one thousand nine hundred eighty-nine, and shall
22 embrace all bridges, tunnels, overpasses, underpasses,
23 interchanges, entrance plazas, approaches, toll houses,
24 service stations and administration, storage and other
25 buildings, which the parkways authority may deem
26 necessary for the operation of the parkway project, or
27 which is used in the operation of a parkway project
28 constructed prior to the first day of June, one thousand
29 nine hundred eighty-nine, together with all property,
30 rights, easements and interests which may be acquired
31 by the parkways authority for the construction or the
32 operation of the parkway project or which were
33 acquired in connection with or are used in the operation
34 of a parkway project constructed prior to the first day
35 of June, one thousand nine hundred eighty-nine.

36 (c) The words "tourism project" mean (i) any park or
37 tourist facility and attraction which the parkways
38 authority may at any time determine to create, develop,
39 construct, reconstruct, improve, maintain or repair
40 under the provisions of this article, and shall embrace
41 all roads, interchanges, entrance plazas, approaches,
42 services stations, administration, storage and any other
43 buildings or service stations, structures which the
44 parkways authority may deem necessary for the oper-

45 ation of the tourism project, together with all property
46 rights, easements and interests which may be acquired
47 by the parkways authority for the construction or
48 operation of the tourism project; and (ii) the construc-
49 tion, reconstruction, improvement, maintenance and
50 repair of any park or tourist facility and attraction
51 owned by the state as of the first day of June, one
52 thousand nine hundred eighty-nine.

53 (d) The words "economic development project" mean
54 any land or water site, structure, facility or equipment
55 which the parkways authority may at any time deter-
56 mine to acquire, create, develop, construct, reconstruct,
57 improve or repair under the provisions of this article to
58 promote the agricultural, economic or industrial
59 development of the state, together with all property
60 rights, easements and interests which may be acquired
61 by the parkways authority for the development, con-
62 struction or operation of such project.

63 (e) The words "project" or "projects" mean a parkway
64 project, economic development project or tourism
65 project, or any combination thereof.

66 (f) The words "transportation secretary" mean the
67 secretary of the state department of transportation.

68 (g) The words "West Virginia turnpike commission"
69 mean the state turnpike commission existing as of the
70 first day of June, one thousand nine hundred eighty-
71 nine.

72 (h) The words "tourist facility and attraction" mean
73 cabins, lodges, recreational facilities, restaurants, and
74 other revenue producing facilities, any land or water
75 site, and any information center, visitors' center or rest
76 stop which the parkways authority determines may
77 improve, enhance or contribute to the development of
78 the tourism industry in the state.

79 (i) The word "turnpike" means the West Virginia
80 Turnpike or any other toll road in the state.

81 (j) The word "expressway" means any road serving
82 major intrastate and interstate travel, including federal
83 interstate routes.

84 (k) The word "trunkline" means any road serving
85 major city to city travel.

86 (l) The words "feeder roads" mean any road serving
87 community to community travel or collects and feeds
88 traffic to an expressway or turnpike.

89 (m) The words "local service road" mean any local
90 arterIALIZED and spur roads which provide land access
91 and socioeconomic benefits to abutting properties.

92 (n) The words "park and forest roads" mean any road
93 serving travel within state parks, state forests and
94 public hunting and fishing areas.

95 (o) The word "cost" as applied to any project, including
96 without limitation the West Virginia Turnpike in
97 sections eleven and twenty-two of this article, embraces
98 the cost of construction, reconstruction, maintenance,
99 improvement, repair and operation of the project, the
100 cost of the acquisition of all land, rights-of-way,
101 property, rights, easements and interests acquired by
102 the parkways authority for such construction, recon-
103 struction, maintenance, improvement and repair, the
104 cost of all machinery, equipment, material and labor
105 which are deemed essential thereto, the cost of improve-
106 ments, the cost of financing charges, interest prior to
107 and during construction and for one year after comple-
108 tion of construction, the cost of traffic estimates and of
109 engineering, consultant, accounting, architects', trus-
110 tees' and legal fees and expenses, plans, specifications,
111 surveys, estimates of cost and of revenues, other costs
112 and expenses necessary or incident to determining the
113 feasibility or practicability of constructing any such
114 project, administrative expenses and such other costs
115 and expenses as may be necessary or incident to the
116 construction of the project, the financing of such
117 construction and the placing of the project in operation
118 or to the operation of the project. Any obligation or
119 expense hereafter incurred by the commissioner of the
120 department of highways with the approval of the
121 parkways authority for traffic surveys, borings, prepa-
122 ration of plans and specifications, and other engineering
123 and consulting services in connection with the construc-

tion of a project shall be regarded as a part of the cost of such project and shall be reimbursed to the state out of the proceeds of parkway revenue bonds or revenue refunding bonds hereinafter authorized.

(p) The word "owner" includes all individuals, copartnerships, associations or corporations having any title or interest in any property, rights, easements and interests authorized to be acquired by this article.

(q) The words "West Virginia Turnpike" mean the turnpike from Charleston to a point approximately one mile south of the intersection of Interstate 77 and U. S. Route 460 near Princeton in Mercer County, West Virginia, which road is presently a part of the federal interstate highway system.

§17-16A-6. Parkway authority's powers.

(a) The parkways authority is hereby authorized and empowered:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places within the state as it may designate;

(4) To sue and be sued in its own name, plead and be impleaded. Any and all actions against the parkways authority shall be brought only in the county in which the principal office of the parkways authority shall be located;

(5) To construct, reconstruct, improve, maintain, repair and operate projects at such locations within the state as may be determined by the parkways authority: *Provided*, That the parkways authority shall be prohibited from constructing motels or any other type of lodging facility within five miles of the West Virginia Turnpike;

(6) To issue parkway revenue bonds of the state of West Virginia, payable solely from revenues, for the

23 purpose of paying all or any part of the cost of any one
24 or more projects, which costs may include, with respect
25 to the West Virginia Turnpike, such funds as are
26 necessary to repay to the state of West Virginia all or
27 any part of the state funds used to upgrade the West
28 Virginia Turnpike to federal interstate standards;

29 (7) To issue parkway revenue refunding bonds of the
30 state of West Virginia, payable solely from revenues, for
31 any one or more of the following purposes: (i) Construct-
32 ing improvements, enlargements or extensions to the
33 project in connection with which the bonds to be
34 refunded were issued; (ii) paying all or part of the cost
35 of any additional project or projects; (iii) refunding any
36 bonds which shall have been issued under the provisions
37 of this article or any predecessor thereof; and (iv)
38 repaying to the state all or any part of the state funds
39 used to upgrade the West Virginia Turnpike to federal
40 interstate standards;

41 (8) To fix and revise from time to time tolls for transit
42 over each parkway project constructed by it or by the
43 West Virginia turnpike commission;

44 (9) To fix and revise from time to time rents, fees or
45 other charges, of whatever kind or character, for the use
46 of each tourism project or economic development project
47 constructed by it or for the use of any building,
48 structure or facility constructed by it in connection with
49 a parkway project;

50 (10) To acquire, hold, lease and dispose of real and
51 personal property in the exercise of its powers and the
52 performance of its duties under this article;

53 (11) To acquire in the name of the state by purchase
54 or otherwise, on such terms and conditions and in such
55 manner as it may deem proper, or by the exercise of the
56 right of condemnation in the manner hereinafter
57 provided, such public or private lands, including public
58 parks, playgrounds or reservations, or parts thereof or
59 rights therein, rights-of-way, property, rights, ease-
60 ments and interests, as it may deem necessary for
61 carrying out the provisions of this article. No compen-
62 sation shall be paid for public lands, playgrounds, parks,

63 parkways or reservations so taken, and all public
64 property damaged in carrying out the powers granted
65 by this article shall be restored or repaired and placed
66 in its original condition as nearly as practicable;

67 (12) To designate the locations, and establish, limit
68 and control such points of ingress to and egress from
69 each project as may be necessary or desirable in the
70 judgment of the parkways authority to ensure the
71 proper operation and maintenance of such project, and
72 to prohibit entrance to such project from any point or
73 points not so designated;

74 (13) To make and enter into all contracts and agree-
75 ments necessary or incidental to the performance of its
76 duties and the execution of its powers under this article,
77 and to employ consulting engineers, attorneys, account-
78 ants, architects, construction and financial experts,
79 trustees, superintendents, managers and such other
80 employees and agents as may be necessary in its
81 judgment, and to fix their compensation. All such
82 expenses shall be payable solely from the proceeds of
83 parkway revenue bonds or parkway revenue refunding
84 bonds issued under the provisions of this article, tolls or
85 from revenues;

86 (14) To make and enter into all contracts, agreements
87 or other arrangements with any agency, department,
88 division, board, bureau, commission, authority or other
89 governmental unit of the state to operate, maintain or
90 repair any project;

91 (15) To receive and accept from any federal agency
92 grants for or in aid of the construction of any project,
93 and to receive and accept aid or contributions from any
94 source of either money, property, labor or other things
95 of value, to be held, used and applied only for the
96 purposes for which such grants and contributions may
97 be made;

98 (16) To do all acts and things necessary or convenient
99 to carry out the powers expressly granted in this article;
100 and

101 (17) To file the necessary petition or petitions pursuant

102 to Title 11, United States Code, Sec. 401 (being section
103 81 of the act of Congress entitled "An act to establish
104 a uniform system of bankruptcy throughout the United
105 States," approved July 1, 1898, as amended) and to
106 prosecute to completion all proceedings permitted by
107 Title 11, United States Code, Secs. 401-403 (being
108 sections 81 to 83, inclusive, of said act of Congress). The
109 state of West Virginia hereby consents to the application
110 of said Title 11, United States Code, Secs. 401-403, to
111 the parkways authority.

112 (b) Nothing in this article shall be construed to
113 prohibit the issuance of parkway revenue refunding
114 bonds in a common plan of financing with the issuance
115 of parkway revenue bonds.

§17-16A-7. Parkway authority's incidental powers.

1 The parkways authority shall have authority to
2 construct grade separations at intersections of any
3 project with public roads and state highways and to
4 change and adjust the lines and grades of such roads
5 and highways so as to accommodate the same to the
6 design of such grade separation. The cost of such grade
7 separations and any damage incurred in changing and
8 adjusting the lines and grades of such roads and
9 highways shall be ascertained and paid by the parkways
10 authority as a part of the cost of such project.

11 If the parkways authority shall find it necessary to
12 change the location of any portion of any public road or
13 state highway, it shall cause the same to be recon-
14 structed at such location as the parkways authority shall
15 deem most favorable and of substantially the same type
16 and in as good condition as the original road or highway.
17 The cost of such reconstruction and any damage
18 incurred in changing the location of any such road or
19 highway shall be ascertained and paid by the parkways
20 authority as a part of the cost of such project.

21 Upon the request of the parkways authority, the
22 commissioner of the state department of highways shall
23 relocate or discontinue any road or highway over which
24 he has authority and control which is affected by the
25 construction of any project.

26 In addition to the foregoing powers, the parkways
27 authority and its authorized agents and employees may
28 enter upon any lands, waters and premises in the state
29 for the purpose of making surveys, soundings, drillings
30 and examinations as it may deem necessary or convenient for the purposes of this article, and such entry
31 shall not be deemed a trespass, nor shall an entry for
32 such purposes be deemed an entry under any condemnation proceedings which may be then pending. The
33 parkways authority shall make reimbursement for any
34 actual damages resulting to such lands, waters and
35 premises as a result of such activities.

38 The state of West Virginia hereby consents to the use
39 of all lands owned by it, including lands lying under
40 water, which are deemed by the parkways authority to
41 be necessary for the construction or operation of any
42 project.

§17-16A-8. Acquisition of land, property, easements, etc.

1 The parkways authority is hereby authorized and
2 empowered to acquire by purchase, whenever it shall
3 deem such purchase expedient, any land, property,
4 rights, rights-of-way, franchises, easements and other
5 interests in lands as it may deem necessary or convenient for the construction or operation of any project upon
6 such terms and at such price as may be considered by
7 it to be reasonable and can be agreed upon between the
8 parkways authority and the owner thereof, and to take
9 title thereto in the name of the state.

§17-16A-9. Condemnation of property.

1 Whenever a reasonable price cannot be agreed upon,
2 or whenever the owner is legally incapacitated, or is
3 absent, unknown or unable to convey valid title, the
4 parkways authority is hereby authorized and empowered to acquire, by the exercise of the power of
5 condemnation in accordance with and subject to the
6 provisions of any and all existing laws and statutes
7 applicable to the exercise of the power of condemnation
8 of property for public use, any land, property, rights,
9 rights-of-way, franchises, easements or other property
10 deemed necessary or convenient for the construction or
11

12 the efficient operation of any project or necessary in the
13 restoration of public or private property damaged or
14 destroyed. In any condemnation proceedings the court
15 having jurisdiction of the suit, action or proceeding may
16 make such orders as may be just to the parkways
17 authority and to the owners of the property to be
18 condemned and may require an undertaking or other
19 security to secure such owners against any loss or
20 damage by reason of the failure of the parkways
21 authority to accept and pay for the property, but neither
22 such undertaking or security nor any act or obligation
23 of the parkways authority shall impose any liability
24 upon the state or the parkways authority except such as
25 may be paid from the funds provided under the
26 authority of this article.

§17-16A-10. Parkway revenue bonds—Generally.

1 The parkways authority is hereby authorized to
2 provide by resolution, at one time or from time to time,
3 for the issuance of parkway revenue bonds of the state
4 for the purpose of paying all or any part of the cost of
5 one or more projects: *Provided*, That this section shall
6 not be construed as authorizing the issuance of parkway
7 revenue bonds for the purpose of paying the cost of the
8 West Virginia Turnpike, which parkway revenue bonds
9 may be issued only as authorized under section eleven
10 of this article. The principal of and the interest on such
11 bonds shall be payable solely from the funds herein
12 provided for such payment. The bonds of each issue shall
13 be dated, shall bear interest at such rate or rates as may
14 be determined by the parkways authority in its sole
15 discretion, shall mature at such time or times not
16 exceeding forty years from their date or dates, as may
17 be determined by the parkways authority, and may be
18 made redeemable before maturity, at the option of the
19 parkways authority, at such price or prices and under
20 such terms and conditions as may be fixed by the
21 parkways authority prior to the issuance of the bonds.
22 The parkways authority shall determine the form of the
23 bonds, including any interest coupons to be attached
24 thereto, and shall fix the denomination or denominations
25 of the bonds and the place or places of payment of

26 principal and interest, which may be at any bank or
27 trust company within or without the state. The bonds
28 shall be executed by manual or facsimile signature by
29 the governor and by the chairman of the parkways
30 authority, and the official seal of the parkways authority
31 shall be affixed to or printed on each bond, and attested,
32 manually or by facsimile signature, by the secretary and
33 treasurer of the parkways authority, and any coupons
34 attached to any bond shall bear the manual or facsimile
35 signature of the chairman of the parkways authority. In
36 case any officer whose signature or a facsimile of whose
37 signature appears on any bonds or coupons shall cease
38 to be such officer before the delivery of such bonds, such
39 signature or facsimile shall nevertheless be valid and
40 sufficient for all purposes the same as if he had
41 remained in office until such delivery; and, in case the
42 seal of the parkways authority has been changed after
43 a facsimile has been imprinted on such bonds, such
44 facsimile seal will continue to be sufficient for all
45 purposes. All bonds issued under the provisions of this
46 article shall have and are hereby declared to have all
47 the qualities and incidents of negotiable instruments
48 under the negotiable instruments law of the state. The
49 bonds may be issued in coupon or in registered form,
50 or both, as the parkways authority may determine, and
51 provision may be made for the registration of any
52 coupon bonds as to principal alone and also as to both
53 principal and interest, and for the reconversion into
54 coupon bonds of any bonds registered as to both
55 principal and interest. The parkways authority may sell
56 such bonds in such manner, either at public or at private
57 sale, and for such price, as it may determine to be in
58 the best interests of the state.

59 The proceeds of the bonds of each issue shall be used
60 solely for the payment of the cost of the parkway project
61 or projects for which such bonds shall have been issued,
62 and shall be disbursed in such manner and under such
63 restrictions, if any, as the parkways authority may
64 provide in the resolution authorizing the issuance of
65 such bonds or in the trust agreement hereinafter
66 mentioned securing the same. If the proceeds of the
67 bonds of any issue, by error of estimates or otherwise,

68 shall be less than such cost, additional bonds may in like
69 manner be issued to provide the amount of such deficit,
70 and, unless otherwise provided in the resolution autho-
71 rizing the issuance of such bonds or in the trust
72 agreement securing the same, shall be deemed to be of
73 the same issue and shall be entitled to payment from the
74 same fund without preference or priority of the bonds
75 first issued. If the proceeds of the bonds of any issue
76 shall exceed the cost of the project or projects for which
77 the same shall have been issued, the surplus shall be
78 deposited to the credit of the sinking fund for such
79 bonds.

80 Prior to the preparation of definitive bonds, the
81 parkways authority may, under like restrictions, issue
82 interim receipts or temporary bonds, with or without
83 coupons, exchangeable for definitive bonds when such
84 bonds shall have been executed and are available for
85 delivery. The parkways authority may also provide for
86 the replacement of any bonds which shall become
87 mutilated or shall be destroyed or lost. Bonds may be
88 issued under the provisions of this article without
89 obtaining the consent of any department, division,
90 commission, board, bureau or agency of the state, and
91 without any other proceedings or the happening of any
92 other conditions or things than those proceedings,
93 conditions or things which are specifically required by
94 this article.

**§17-16A-11. Parkway revenue bonds—West Virginia
Turnpike; related projects.**

1 The parkways authority is hereby authorized to
2 provide by resolution, at one time or from time to time,
3 for the issuance of parkway revenue bonds of the state
4 in an aggregate principal amount not to exceed eighty-
5 three million dollars for the purpose of paying (i) all or
6 any part of the cost of the West Virginia Turnpike,
7 which cost may include, but not be limited to, an amount
8 equal to the state funds used to upgrade the West
9 Virginia Turnpike to federal interstate standards, and
10 (ii) to the extent permitted by federal law, all or any
11 part of the cost of any related parkway project. For
12 purposes of this section eleven only, a "related parkway

13 project" means any information center, visitors' center
14 or rest stop, or any combination thereof, and any
15 expressway, turnpike, trunkline, feeder road, state local
16 service road or park and forest road which connects to
17 or intersects with the West Virginia Turnpike and is
18 located within seventy-five miles of said turnpike as it
19 exists on the first day of June, one thousand nine
20 hundred eighty-nine, or any subsequent expressway,
21 trunkline, feeder road, state local service road or park
22 and forest road constructed pursuant to this article:
23 *Provided*, That nothing herein shall be construed as
24 prohibiting the parkways authority from issuing
25 parkway revenue bonds pursuant to section ten of this
26 article for the purpose of paying all or any part of the
27 cost of any such related parkway project: *Provided*,
28 *however*, That none of the proceeds of the issuance of
29 parkway revenue bonds under this section shall be used
30 to pay all or any part of the cost of any economic
31 development project, except as provided in section
32 twenty-three of this article: *Provided further*, That
33 nothing herein shall be construed as prohibiting the
34 parkways authority from issuing additional parkway
35 revenue bonds to the extent permitted by applicable
36 federal law for the purpose of constructing, maintaining
37 and operating any highway constructed in whole or in
38 part with money obtained from appalachian regional
39 commission so long as said highway connects to the West
40 Virginia Turnpike as it existed as of the first day of
41 June, one thousand nine hundred eighty-nine. Except as
42 otherwise specifically provided in this section, the
43 issuance of parkway revenue bonds pursuant to this
44 section, the maturities and other details thereof, the
45 rights of the holders thereof, and the rights, duties and
46 obligations of the parkways authority in respect of the
47 same, shall be governed by the provisions of this article
48 insofar as the same may be applicable.

§17-16A-12. Parkway revenue bonds—Trust agreement.

1 In the discretion of the parkways authority any bonds
2 issued under the provisions of this article may be
3 secured by a trust agreement by and between the
4 parkways authority and a corporate trustee, which may

5 be any trust company or bank having the powers of a
6 trust company within or without the state. Any such
7 trust agreement may pledge or assign the tolls, rents,
8 fees, charges and other revenues to be received, but shall
9 not convey or mortgage any project or any part thereof.
10 Any such trust agreement or any resolution providing
11 for the issuance of such bonds may contain such
12 provisions for protecting and enforcing the rights and
13 remedies of the bondholders as may be reasonable and
14 proper and not in violation of law, including covenants
15 setting forth the duties of the parkways authority in
16 relation to the acquisition of property and the construc-
17 tion, reconstruction, improvement, maintenance, repair,
18 operation and insurance of the project or projects in
19 connection with which such bonds shall have been
20 authorized, and the custody, safeguarding and applica-
21 tion of all moneys, and provisions for the employment
22 of consulting engineers in connection with the construc-
23 tion or operation of such project or projects. It shall be
24 lawful for any bank or trust company incorporated
25 under the laws of the state which may act as depository
26 of the proceeds of bonds or of revenues to furnish such
27 indemnifying bonds, or to pledge such securities as may
28 be required by the parkways authority. Any such trust
29 agreement may set forth the rights and remedies of the
30 bondholders and of the trustee, and may restrict the
31 individual right of action by bondholders as is custom-
32 ary in trust agreements or trust indentures securing
33 bonds and debentures of corporations. In addition to the
34 foregoing, any such trust agreement may contain such
35 other provisions as the parkways authority may deem
36 reasonable and proper for the security of the bond-
37 holders. All expenses incurred in carrying out the
38 provisions of any such trust agreement may be treated
39 as a part of the cost of the operation of the project or
40 projects to which the trust agreement applies.

**§17-16A-13. Tolls, rents, fees, charges and revenues;
competitive bidding on contracts.**

1 (a) The parkways authority is hereby authorized to
2 fix, revise, charge and collect tolls for the use of each
3 parkway project and the different parts or sections
4 thereof, and to fix, revise, charge and collect rents, fees,

5 charges and other revenues, of whatever kind or
6 character, for the use of each economic development
7 project or tourism project, or any part or section thereof,
8 and to contract with any person, partnership, association
9 or corporation desiring the use of any part thereof,
10 including the right-of-way adjoining the paved portion,
11 for placing thereon telephone, telegraph, electric light,
12 power or other utility lines, gas stations, garages, stores,
13 hotels, restaurants and advertising signs, or for any
14 other purpose except for tracks for railroad or railway
15 use, and to fix the terms, conditions, rents and rates of
16 charges for such use. Such tolls, rents, fees and charges
17 shall be so fixed and adjusted in respect of the aggregate
18 of tolls, or in respect of the aggregate rents, fees and
19 charges, from the project or projects in connection with
20 which the bonds of any issue shall have been issued as
21 to provide a fund sufficient with other revenues, if any,
22 to pay (a) the cost of maintaining, repairing and
23 operating such project or projects and (b) the principal
24 of and the interest on such bonds as the same shall
25 become due and payable, and to create reserves for such
26 purposes. Such tolls, rents, fees and other charges shall
27 not be subject to supervision or regulation by any other
28 commission, board, bureau, department or agency of the
29 state. The tolls, rents, fees, charges and all other
30 revenues derived from the project or projects in
31 connection with which the bonds of any issue shall have
32 been issued, except such part thereof as may be
33 necessary to pay such cost of maintenance, repair and
34 operation and to provide such reserves therefor as may
35 be provided for in the resolution authorizing the
36 issuance of such bonds or in the trust agreement
37 securing the same, shall be set aside at such regular
38 intervals as may be provided in such resolution or such
39 trust agreement in a sinking fund which is hereby
40 pledged to, and charged with, the payment of (1) the
41 interest upon such bonds as such interest shall fall due,
42 (2) the principal of such bonds as the same shall fall due,
43 (3) the necessary charges of paying agents for paying
44 principal and interest, and (4) the redemption price or
45 the purchase price of bonds retired by call or purchase
46 as therein provided. The use and disposition of moneys

47 to the credit of such sinking fund shall be subject to the
48 provisions of the resolution authorizing the issuance of
49 such bonds or of such trust agreement. Except as may
50 otherwise be provided in such resolution or such trust
51 agreement, such sinking fund shall be a fund for all
52 such bonds without distinction or priority of one over
53 another. The moneys in the sinking fund, less such
54 reserve as may be provided in such resolution or trust
55 agreement, if not used within a reasonable time for the
56 purchase of bonds for cancellation as above provided,
57 shall be applied to the redemption of bonds at the
58 redemption price then applicable.

59 (b) The parkways authority shall cause, as soon as it
60 is legally able to do so, all contracts to which it is a party
61 and which relate to the operation, maintenance or use
62 of any restaurant, motel or other lodging facility, truck
63 and automobile service facility, food vending facility or
64 any other service facility located along the West
65 Virginia Turnpike, to be renewed on a competitive bid
66 basis. All contracts relating to any facility or services
67 entered into by the parkways authority with a private
68 party with respect to any project constructed after the
69 effective date of this legislation shall be let on a
70 competitive bid basis only. If the parkways authority
71 receives a proposal for the development of a project,
72 such proposal shall be made available to the public in
73 a convenient location in the county wherein the proposed
74 facility may be located. The parkways authority shall
75 publish a notice of the proposal by a Class I legal
76 advertisement in accordance with the provisions of
77 article three, chapter fifty-nine of this code. The
78 publication area shall be the county in which the
79 proposed facility would be located. Any citizen may
80 communicate by writing to the parkways authority his
81 or her opposition to or approval to such proposal within
82 a period of time not less than forty-five days from the
83 publication of the notice. No contract for the develop-
84 ment of a project may be entered into by the parkways
85 authority until a public hearing is held in the vicinity
86 of the location of the proposed project with at least
87 twenty days notice of such hearing by a Class I
88 publication pursuant to section two, article three,

89 chapter fifty-nine of this code. The parkways authority
90 shall make written findings of fact prior to rendering
91 a decision on any proposed project. All studies, records,
92 documents and other materials which are considered by
93 the parkways authority in making such findings shall
94 be made available for public inspection at the time of
95 the publication of the notice of public hearing and at a
96 convenient location in the county where the proposed
97 project may be located. The parkways authority shall
98 promulgate rules in accordance with chapter twenty-
99 nine-a of this code for the conduct of any hearing
100 required by this section. Persons attending any such
101 hearing shall be afforded a reasonable opportunity to
102 speak and be heard on the proposed project.

§17-16A-14. Trust funds.

1 All moneys received pursuant to the authority of this
2 article, whether as proceeds from the sale of bonds or
3 as revenues, shall be deemed to be trust funds, to be held
4 and applied solely as provided in this article. The
5 resolution authorizing the issuance of bonds of any issue
6 or the trust agreement securing such bonds shall
7 provide that any officer to whom, or any bank or trust
8 company to which, such moneys shall be paid shall act
9 as trustee of such moneys and shall hold and apply the
10 same for the purposes hereof, subject to such regulations
11 as this article and such resolution or trust agreement
12 may provide.

§17-16A-15. Remedies.

1 Any holder of bonds issued under the provisions of this
2 article or any of the coupons appertaining thereto, and
3 the trustee under any trust agreement, except to the
4 extent the rights herein given may be restricted by such
5 trust agreement, may, either at law or in equity, by suit,
6 action, mandamus or other proceeding, protect and
7 enforce any and all rights under the laws of the state
8 or granted hereunder or under such trust agreement or
9 the resolution authorizing the issuance of such bonds,
10 and may enforce and compel the performance of all
11 duties required by this article or by such trust agree-

12 ment or resolution to be performed by the parkways
13 authority or by any officer thereof, including the fixing,
14 charging and collecting of tolls, rents, fees and charges.

§17-16A-16. Exemption from taxation.

1 (a) The exercise of the powers granted by this article
2 will be in all respects for the benefit of the people of
3 the state, for the increase of their commerce and
4 prosperity, and for the improvement of their health and
5 living conditions, and as the operation and maintenance
6 of projects by the parkways authority will constitute the
7 performance of essential governmental functions, the
8 parkways authority shall not be required to pay any
9 taxes or assessments upon any project or any property
10 acquired or used by the parkways authority under the
11 provisions of this article or upon the income therefrom,
12 and the bonds issued under the provisions of this article,
13 their transfer and the income therefrom (including any
14 profit made on the sale thereof) shall at all times be free
15 from taxation within the state.

16 (b) In lieu of payment by the parkways authority of
17 county property taxes and other assessments on restau-
18 rant and gas service facilities owned by it, or upon any
19 facility described in subsection (b) of section thirteen
20 herein which is leased to any private person, corpora-
21 tion, or entity, the parkways authority shall make an
22 annual payment as provided herein to the county
23 commission of such county. Any parkways authority
24 project which is leased and is exempt from taxation
25 shall be subject to a payment in lieu of taxes. Said
26 payment shall be made to the county commission of the
27 county in which the project is located and shall be in
28 an amount equal to the property taxes otherwise
29 payable. The county commission receiving such in lieu
30 of payment shall distribute such payment to the
31 different levying bodies in that county in the same
32 manner as are property taxes. Nothing contained herein
33 may be construed to prohibit the parkways authority
34 from collecting such in lieu payment from any private
35 party by contract or otherwise.

§17-16A-17. Repair, etc., of damaged property; conveyances, etc., by counties, cities, etc., to parkways authority; maintenance and policing of projects; defrauding parkways authority; evading payment of tolls, rents, fees or charges; trespassing.

1 All private property damaged or destroyed in carry-
2 ing out the powers granted by this article shall be
3 restored or repaired and placed in its original condition
4 as nearly as practicable or adequate compensation made
5 therefor out of funds provided under the authority of
6 this article.

7 All counties, cities, villages, townships and other
8 political subdivisions and all public agencies and
9 commissions of the state of West Virginia, notwithstand-
10 ing any contrary provision of law, are hereby authorized
11 and empowered to lease, lend, grant or convey to the
12 parkways authority at its request upon such terms and
13 conditions as the proper authorities of such counties,
14 cities, villages, townships, other political subdivisions or
15 public agencies and commissions of the state may deem
16 reasonable and fair and without the necessity for any
17 advertisement, order of court or other action or formal-
18 ity, other than the regular and formal action of the
19 authorities concerned, any real property which may be
20 necessary or convenient to the effectuation of the
21 authorized purposes of the parkways authority, includ-
22 ing public roads and other real property already devoted
23 to public use.

24 Each project when constructed and opened to traffic
25 or use shall be maintained and kept in good condition
26 and repair by the parkways authority. The parkways
27 authority and the superintendent of the department of
28 public safety may by agreement provide that such
29 project or projects shall be policed by members of such
30 department under such terms and conditions as they
31 may determine, excepting that all costs thereof, either
32 direct or indirect, including overhead costs attributable
33 thereto, shall be paid unto such department by the
34 parkways authority at regular intervals not to exceed
35 one year.

36 Whoever shall knowingly or intentionally defraud or
37 attempt to defraud the parkways authority, any of its
38 tolltakers or other employees in regard to the payment
39 of tolls, rents, fees or charges established by the
40 parkways authority for the use of any such project or
41 evade or attempt to evade or whoever shall aid another
42 to evade or attempt to evade the payment of such toll,
43 rent, fee or charge or whoever shall intentionally and
44 knowingly trespass upon any project shall be guilty of
45 a misdemeanor; and for every such offense shall upon
46 conviction thereof be fined not in excess of fifty dollars.
47 Magistrate courts shall have jurisdiction of misdemea-
48 nors created by this paragraph concurrently with
49 circuit courts.

§17-16A-18. Cessation of tolls.

1 (a) Except as provided herein, when all bonds issued
2 under the provisions of this article in connection with
3 any parkway project or projects and the interest thereon
4 shall have been paid or a sufficient amount for the
5 payment of all such bonds and the interest thereon to
6 the maturity thereof shall have been set aside in trust
7 for the benefit of the bondholders, such project or
8 projects, if then in good condition and repair to the
9 satisfaction of the commissioner of the state department
10 of highways, shall be transferred to the state depart-
11 ment of highways and shall thereafter be maintained by
12 the state department of highways free of tolls: *Provided*,
13 That the parkways authority may thereafter charge tolls
14 for the use of any such project and for the reconstruc-
15 tion, improvement, maintenance and repair thereof,
16 except as may be limited by applicable federal laws, and
17 pledge such tolls to the payment of bonds issued under
18 the provisions of this article in connection with another
19 project or projects, or any combination thereof, but any
20 such pledge of tolls of a parkway project to the payment
21 of bonds issued in connection with another project or
22 projects shall not be effectual until the principal of and
23 the interest on the bonds issued in connection with the
24 first mentioned project shall have been paid or provision
25 made for their payment.

26 (b) No later than the first day of February, one

27 thousand nine hundred ninety, the parkways authority
28 shall discontinue, remove and not relocate all toll
29 collection facilities on the West Virginia Turnpike
30 except for the three main toll collection facilities
31 existing on the West Virginia Turnpike as of the
32 effective date of this legislation: *Provided*, That nothing
33 herein may be construed to prohibit placement of new
34 tolls to the extent permitted by federal law for any new
35 expressway, turnpike, trunkline, feeder road, state local
36 service road, or park and forest road connected to the
37 West Virginia Turnpike and constructed after the first
38 of June, one thousand nine hundred eighty-nine.

§17-16A-19. Preliminary expenses.

1 The commissioner of the state department of high-
2 ways is hereby authorized in his discretion to expend out
3 of any funds available for the purpose such moneys as
4 may be necessary for the study of any parkway,
5 economic development or tourism project or projects and
6 to use the department of highway's engineering and
7 other forces, including consulting engineers and traffic
8 engineers, for the purpose of effecting such study and
9 to pay for such additional engineering and traffic and
10 other expert studies as he may deem expedient; and all
11 such expenses incurred by the state department of
12 highways prior to the issuance of parkway revenue
13 bonds or revenue refunding bonds under the provisions
14 of this article shall be paid by the state department of
15 highways and charged to the appropriate project or
16 projects, and the state department of highways shall
17 keep proper records and accounts showing each amount
18 so charged. Upon the sale of parkway revenue bonds or
19 revenue refunding bonds for any project or projects, the
20 funds so expended by the state department of highways
21 in connection with such project or projects shall be
22 reimbursed to the state department of highways from
23 the proceeds of such bonds.

**§17-16A-20. Parkway projects part of state road system;
pledge of limited funds by state depart-
ment of highways in case of deficit.**

1 It is hereby declared that any expressway, turnpike,

2 feeder road, state local service road or park and forest
3 road or other road, or any subsequent expressway,
4 turnpike feeder road, state local service road, park and
5 forest road or other road constructed pursuant to this
6 article shall be a part of the state road system, although
7 subject to the provisions of this article and of any bonds
8 or trust agreements entered into pursuant thereto, and
9 that the construction of such parkway projects shall be
10 considered as developments of the state road system.
11 Any other provisions of this article to the contrary
12 notwithstanding, in order to encourage the development
13 of the state road system, the state is authorized in its
14 discretion to pledge by resolution and agreement
15 annually to pay from the state road fund, subject to all
16 prior commitments of such fund which shall be stated
17 in the resolution and agreement, the amount of any
18 yearly deficit between the principal and interest
19 requirements of any such parkway project or portion
20 thereof hereafter constructed and the amount available
21 in the hands of the parkways authority to pay such
22 requirements, up to three fourths of one percent of the
23 estimated or actual construction cost of such parkway
24 project or portion thereof for which such pledge is made,
25 until any bonds issued and interest due upon the basis
26 of such a pledge have been fully paid and satisfied:
27 *Provided*, That the state department of highways shall
28 enter into no agreement with underwriters on any bond
29 issue for the purpose of constructing or aiding in the
30 construction of any toll road unless and until there is
31 filed with the parkways authority a report and finding
32 of reputable traffic engineers of national standing,
33 showing that the earnings from the proposed toll road
34 will be sufficient to provide annual income in an amount
35 at least large enough to cover the annual cost of retiring
36 the indebtedness, including interest, sinking fund and
37 operating costs of such toll highway.

**§17-16A-21. Parkway revenue refunding bonds—
Generally.**

1 The parkways authority is hereby authorized to
2 provide by resolution for the issuance of parkway
3 revenue refunding bonds of the state for the purpose of

4 refunding any bonds then outstanding which shall have
5 been issued under the provisions of this article, includ-
6 ing the payment of any redemption premium thereon
7 and any interest accrued or to accrue to the date of
8 redemption of such bonds; and, if deemed advisable by
9 the parkways authority, for the additional purpose of
10 constructing improvements, extensions or enlargements
11 of the project or projects in connection with which the
12 bonds to be refunded shall have been issued: *Provided,*
13 That this section shall not be construed as authorizing
14 the issuance of parkway revenue refunding bonds for
15 the purpose of refunding any bonds then outstanding
16 which shall have been issued under the provisions of this
17 article, or any predecessor thereof, in connection with
18 the construction of the West Virginia Turnpike, which
19 revenue refunding bonds may be issued only as autho-
20 rized under section twenty-two of this article. The
21 parkways authority is further authorized to provide by
22 resolution for the issuance of parkway revenue bonds of
23 the state for the combined purpose of two or more of the
24 following: (a) Refunding any bonds then outstanding
25 which shall have been issued under the provisions of this
26 article, including the payment of any redemption
27 premium thereon and any interest accrued or to accrue
28 to the date of redemption of such bonds; (b) paying all
29 or any part of the cost of any additional project or
30 projects; and (c) repaying to the state all or any part of
31 the state funds used to upgrade the West Virginia
32 Turnpike to federal interstate standards. The issuance
33 of such bonds, the maturities and other details thereof,
34 the rights of the holders thereof, and the rights, duties
35 and obligations of the parkways authority in respect of
36 the same, shall be governed by the provisions of this
37 article insofar as the same may be applicable.

§17-16A-22. Parkway revenue refunding bonds—West Virginia Turnpike.

1 The parkways authority is hereby authorized to
2 provide by resolution for the issuance of parkway
3 revenue refunding bonds of the state in an aggregate
4 principal amount not to exceed sixty million dollars for
5 the purpose of refunding any bonds which shall have

6 been issued under this article, or any predecessor
7 thereof, in connection with the construction of the West
8 Virginia Turnpike, including the payment of any
9 redemption premium thereon and any interest accrued
10 or to accrue to the date of redemption of such bonds,
11 and, to the extent permissible under federal law and if
12 deemed advisable by the parkways authority, for either
13 or both of the following purposes: (a) Paying all or any
14 part of the cost of any additional parkway project or
15 projects, and (b) repaying to the state all or any part
16 of the state funds used to upgrade the West Virginia
17 Turnpike to federal interstate standards: *Provided*, That
18 any proceeds derived from the issuance of such bonds
19 which are used on any parkway project other than the
20 West Virginia Turnpike must be used solely on parkway
21 projects (i) which are either connected to or intersect
22 with the West Virginia Turnpike and are within
23 seventy-five air miles of said Turnpike as it exists on the
24 first day of June, one thousand nine hundred eighty-
25 nine, or any subsequent expressway, trunkline, turn-
26 pike, feeder road, state local service road or park and
27 forest road constructed pursuant to this article, and (ii)
28 which involve the upgrading or addition of inter-
29 changes, the construction of expressways or feeder
30 roads, or the upgrading or construction of information
31 centers, visitors' centers, rest stops, or any combination
32 thereof: *Provided, however*, That none of the proceeds of
33 the issuance of parkway revenue refunding bonds issued
34 under this section shall be used to pay all or any part
35 of the cost of any economic development project, except
36 as provided in section twenty-three of this article.
37 Except as otherwise specifically provided in this section,
38 the issuance of parkway revenue refunding bonds
39 pursuant to this section, the maturities and other details
40 thereof, the rights of the holders thereof, and the rights,
41 duties and obligations of the parkways authority in
42 respect of the same, shall be governed by the provisions
43 of this article insofar as the same may be applicable.

§17-16A-23. Special highway fund; appropriations from fund.

- 1 (a) There is hereby created a special fund in the state

2 treasury which shall be designated and known as the
3 "West Virginia special highway fund." The special
4 highway fund shall consist of (i) all funds allocated and
5 disbursed to the state department of highways by the
6 parkways authority, including without limitation the
7 proceeds of any parkway revenue bonds or revenue
8 refunding bonds issued by the parkways authority
9 pursuant to sections eleven, twenty-one or twenty-two of
10 this article, in repayment of the amount of state funds
11 used to upgrade the West Virginia Turnpike to federal
12 interstate standards, (ii) any appropriations, grants,
13 gifts, contributions or other revenues received by the
14 special highway fund from any source, and (iii) all
15 interest earned on moneys held in the fund. When any
16 funds are received by the state department of highways
17 from the parkways authority pursuant to this section,
18 they shall be paid into the state treasury by the
19 commissioner of the department of highways and
20 credited to the special highway fund, and shall be
21 disbursed in the manner set forth in subsections (b) and
22 (c) of this section. The special highway fund shall not
23 be treated by the auditor and treasurer as part of the
24 state road fund or as part of the general revenues of the
25 state.

26 (b) The governor shall have the authority to transfer
27 to the insurance fund created in section eight, article
28 fifteen, chapter thirty-one of this code, on any date or
29 dates after the enactment of this section, up to thirty-
30 five million dollars of the funds received or earned by
31 the special highway fund, which funds may be used and
32 applied by the West Virginia economic development
33 authority in the manner and to the extent set forth in
34 article fifteen of said chapter thirty-one. On or before
35 the thirty-first day of December, one thousand nine
36 hundred ninety-four, the economic development author-
37 ity shall retransfer to the special highway fund the
38 thirty-five million dollars advanced to the insurance
39 fund pursuant to this section. All interest earned on the
40 thirty-five million dollars while being held in the
41 insurance fund shall remain in, and be the property of,
42 said insurance fund.

43 (c) Upon the transfer of thirty-five million dollars to
44 the insurance fund as provided in subsection (b) of this
45 section, the Legislature shall annually appropriate all or
46 any part of the balance of the funds deposited in the
47 special highway fund for the construction, reconstruc-
48 tion, improvement, maintenance or repair of any
49 parkway project or projects: *Provided*, That all of such
50 funds shall be appropriated to (i) the upgrading or
51 addition of interchanges; (ii) the construction of express-
52 ways or feeder roads; or (iii) the upgrading or construc-
53 tion of information centers, visitors' centers, rest stops,
54 or any combination thereof, and that all such feeder
55 roads, expressways, interchanges, information centers,
56 visitors' centers or rest stops shall connect to the West
57 Virginia Turnpike and be within seventy-five air miles
58 of the West Virginia Turnpike as it existed on the
59 effective date of this legislation, or any subsequent
60 expressway, turnpike or feeder road constructed
61 pursuant to this subsection. The appropriation of funds
62 pursuant to this subsection shall be expended on more
63 than one project.

**§17-16A-24. Article deemed to provide additional and
alternative methods.**

1 This article shall be deemed to provide an additional
2 and alternative method for the doing of the things
3 authorized thereby, and shall be regarded as supple-
4 mental and additional to powers conferred by other
5 laws, and shall not be regarded as in derogation of any
6 powers now existing. The issuance of special obligation
7 bonds under the provisions of this article need not
8 comply with the requirements of any other law appli-
9 cable to the issuance of bonds.

**§17-16A-25. Additional powers of parkways authority;
issuance of special obligation bonds.**

1 (a) In addition to all powers granted by the foregoing
2 sections of this article, the parkways authority in
3 connection with a proceeding prosecuted to completion
4 under Title 11, United States Code, Secs. 401-403, as
5 permitted by subdivision (17), section six of this article
6 is hereby authorized to provide by resolution for the

7 issuance of special obligation bonds of the state for the
8 purpose of exchanging such special obligation bonds for
9 all bonds then outstanding which shall have been issued
10 under the provisions of this article. Special obligation
11 bonds issued under the provisions of this section shall
12 not be deemed to constitute a debt of the state or of any
13 political subdivision thereof or a pledge of the faith and
14 credit of the state or of any such political subdivision,
15 but such bonds shall be payable solely from the funds
16 herein provided therefor from pledged property and
17 income therefrom as provided in subdivision (1) of this
18 subsection. All such special obligation bonds shall
19 contain on the face thereof a statement in accordance
20 with the preceding sentence. The issuance of such bonds,
21 the maturities and other details thereof, the rights of the
22 holders thereof, and the rights, duties and obligations of
23 the parkways authority in respect of the same shall be
24 governed by the provisions of this article insofar as the
25 same may be applicable with the following express
26 exceptions:

27 (1) The principal of and the interest on such special
28 obligation bonds shall not be payable from tolls, rents,
29 fees, charges or revenues of any parkway project but
30 shall be payable solely from such other property
31 purchased and pledged as security therefor as the
32 parkways authority shall determine together with the
33 income derived therefrom which other property may
34 include direct obligations of, or obligations the principal
35 of and the interest on which are guaranteed by, the
36 United States government or participation certificates
37 or other obligations issued by or by authority of the
38 United States government; and

39 (2) Following the issuance of such special obligation
40 bonds there shall be no obligation to fix, revise, charge
41 and collect tolls for the use of any parkway project and
42 any parkway project shall be transferred to the state
43 department of highways and shall thereafter be main-
44 tained by the state department of highways free of tolls.
45 At such time as the special obligation bonds are issued,
46 then section eighteen of this article shall be of no further
47 force and effect.

48 (b) Financial, legal, engineering and feasibility
49 consultants may be employed to perform such services
50 as the parkways authority shall deem necessary or
51 desirable in connection with the Title 11 proceedings
52 mentioned above and the issuance and exchange of the
53 special obligation bonds.

54 (c) The entire powers herein granted by this section
55 to the parkways authority may be exercised by the state
56 department of highways in which event the special
57 obligation bonds herein authorized shall be executed by
58 manual or facsimile signature by the governor and by
59 the commissioner of the department of highways, and
60 the official seal of the department of highways shall be
61 affixed to or printed on each bond, and any coupons
62 attached to such bonds shall bear the manual or
63 facsimile signature of the commissioner of the state
64 department of highways. In the event that the state
65 department of highways shall elect to exercise the
66 powers granted by this section, it shall file a statement
67 to that effect in the office of the chairman of the
68 parkways authority and in the office of the secretary of
69 state, and upon the issuance of the special obligation
70 bonds herein provided for, the state department of
71 highways shall succeed immediately to the principal
72 functions of the parkways authority and the parkways
73 authority shall then be abolished.

74 (d) The state department of highways is hereby
75 empowered to acquire by purchase the parkways
76 authority and all its rights-of-way, equipment, facilities
77 and any and all other rights or interest the parkways
78 authority has or had in any project, from any funds
79 available to it, and to pay any expenses incident to such
80 acquisition under the provisions of this article: *Provided*,
81 That the contribution of the state department of
82 highways in making such acquisition shall not exceed
83 the sum of twenty million dollars from all sources of
84 public moneys of the state of West Virginia, excluding
85 any funds reimbursed or reimbursable or otherwise
86 provided or to be provided by the federal government.
87 No funds derived from the sale of the three hundred
88 fifty million dollars bond issue authorized by the roads

89 development amendment shall be included in the
90 acquisition of the West Virginia Turnpike.

§17-16A-26. Annual report.

1 The parkways authority shall prepare on an annual
2 basis and provide to each member of the West Virginia
3 Legislature who so requests an annual report detailing
4 the financial condition and operations of the parkways
5 authority. The parkways authority shall provide to the
6 joint committee on government and finance any finan-
7 cial statements as may be required under any trust
8 agreement to which the parkways authority is a party.

§17-16A-27. Exit awareness signs.

1 Consistent with applicable federal laws, rules and
2 regulations, the parkways authority shall develop and
3 prepare a uniform roadway sign identifying the avail-
4 ability of restaurants, gas stations, hotel accommoda-
5 tions and emergency services available off each exit of
6 the West Virginia Turnpike. At every tourism project
7 maintained or operated by the parkways authority and
8 which is constructed after the effective date of this
9 legislation, and, to the extent permitted under the terms
10 of the applicable lease, at every currently existing
11 service station, gas station, hotel or restaurant, garage
12 or store maintained, operated or leased by the parkways
13 authority, the parkways authority shall at no charge or
14 cost permit the placement of, in a conspicuous place, all
15 reasonably sized advertising literature prepared and
16 delivered by hotels, restaurants and other tourist
17 attractions, whether public or private, located within
18 the state of West Virginia.

§17-16A-28. Severability.

1 If any section, subsection, subdivision, subparagraph,
2 sentence or clause of this article is adjudged to be
3 unconstitutional or invalid, such adjudication shall not
4 affect the validity of the remaining portions of this
5 article, and, to this end, the provisions of this article are
6 hereby declared to be severable.

§17-16A-29. Effective date.

- 1 The provisions of this article as amended or added by
- 2 this act shall take effect on the first day of June, one
- 3 thousand nine hundred eighty-nine.

CHAPTER 188

(H. B. 2025—By Delegate Love)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the interagency committee on pesticides.

Be it enacted by the Legislature of West Virginia:

That section three, article twelve-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12C. INTERAGENCY COMMITTEE ON PESTICIDES.**§19-12C-3. Committee created; membership; chairman; continuation.**

- 1 (a) There is hereby created an interagency committee
- 2 on pesticides to consist of the (1) commissioner of the
- 3 department of agriculture, (2) director of the depart-
- 4 ment of natural resources, (3) director of the department
- 5 of public health, (4) director of the West Virginia
- 6 University agricultural experiment station, and (5)
- 7 director of the air pollution control commission.

- 8 The commissioner of agriculture shall be chairman of
- 9 this committee. Each member of the committee may
- 10 designate some person in his department to serve in his
- 11 stead on the committee.

- 12 (b) After having conducted a performance and fiscal
- 13 audit through its joint committee on government
- 14 operations, pursuant to section nine, article ten, chapter

15 four of this code, the Legislature hereby finds and
16 declares that the interagency committee on pesticides
17 should be continued and reestablished. Accordingly,
18 notwithstanding the provisions of section four, article
19 ten, chapter four of this code, the interagency committee
20 on pesticides shall continue to exist until the first day
21 of July, one thousand nine hundred ninety-one.

CHAPTER 189

(H. B. 2052—By Delegates Love and Ashley)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article sixteen-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to continuation of the pesticides board of review.

Be it enacted by the Legislature of West Virginia:

That article sixteen-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-a, to read as follows:

ARTICLE 16A. PESTICIDES.

§19-16A-4a. Continuation of board.

1 After having conducted a performance and fiscal
2 audit through its joint committee on government
3 operations, pursuant to section nine, article ten, chapter
4 four of this code, the Legislature hereby finds and
5 declares that the pesticides board of review should be
6 continued and reestablished. Accordingly, notwithstanding
7 the provisions of section four, article ten, chapter
8 four of this code, the pesticides board of review shall
9 continue to exist until the first day of July, one thousand
10 nine hundred ninety-one.

CHAPTER 190

(H. B. 2053—By Delegates Love and Ashley)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the department of corrections.

Be it enacted by the Legislature of West Virginia:

That section two, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-2. Reestablishment of department; findings.

1 After having conducted a performance and fiscal
2 audit through its joint committee on government
3 operations, pursuant to section nine, article ten, chapter
4 four of this code, the Legislature hereby finds and
5 declares that the department of corrections should be
6 continued and reestablished. Accordingly, notwithstand-
7 ing the provisions of section four, article ten, chapter
8 four of this code, the department of corrections shall
9 continue to exist until the first day of July, one thousand
10 nine hundred ninety.

CHAPTER 191

(H. B. 2054—By Delegates Love and Leggett)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article one-d, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing membership in the Ohio River Valley Water Sanitation Commission.

Be it enacted by the Legislature of West Virginia:

That section six, article one-d, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1D. OHIO RIVER VALLEY WATER SANITATION COMMISSION.

§29-1D-6. When article effective; findings; continuation.

1 This article shall take effect and become operative and
2 the compact be executed for and on behalf of this state
3 only from and after the approval, ratification, and
4 adoption, and entering into thereof by the states of New
5 York, Pennsylvania, Ohio, and Virginia.

6 After having conducted a performance and fiscal
7 audit through its joint committee on government
8 operations, pursuant to section nine, article ten, chapter
9 four of this code, the Legislature hereby finds and
10 declares that West Virginia should remain a member of
11 the compact. Accordingly, notwithstanding the provi-
12 sions of section four, article ten, chapter four of this
13 code, West Virginia shall continue to be a member of
14 this compact until the first day of July, one thousand
15 nine hundred ninety-four.

CHAPTER 192

(H. B. 2618—By Delegates Schoonover and M. Burke)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assessment of corporate property; reports to assessor by corporation.

Be it enacted by the Legislature of West Virginia:

That section twelve, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-12. Assessment of corporate property; reports to assessor by corporations.

1 Each incorporated company, foreign or domestic,
2 having its principal office or chief place of business in
3 this state, or owning property subject to taxation in this
4 state, except railroad, telegraph and express companies,
5 telephone companies, pipeline, car line companies and
6 other public utility companies, banking institutions,
7 national banking associations, building and loan associ-
8 ations, federal savings and loan associations and
9 industrial loan companies, shall annually, between the
10 first day of the assessment year and the first day of
11 October, make a written report, verified by the oath of
12 the president or chief accounting officer, to the assessor
13 of the county in which its principal office or chief place
14 of business is situated or in which such property subject
15 to taxation in this state is located if such corporation
16 does not have a principal office or chief place of business
17 in this state, showing the following items, viz: (a) The
18 amount of capital authorized to be employed by it; (b)
19 the amount of cash capital paid on each share of stock;
20 (c) the amount of credits and investments other than its
21 own capital stock held by it on said date, with their true
22 and actual value; (d) the quantity, location and true and
23 actual value of all of its real estate, and the tax district
24 or districts in which it is located; and (e) the kinds,
25 quantity and true and actual value of all its tangible
26 property in each tax district in which it is located.

27 The oath required for this section shall be substan-
28 tially as follows, viz:

29 State of West Virginia, County of _____, ss:

30 I, _____, president (treasurer or
31 manager) of (here insert name of corporation), do
32 solemnly swear (or affirm) that the foregoing is, to the
33 best of my knowledge and judgment, true in all respects;
34 that it contains a statement of all the real estate and
35 personal property, including credits and investments
36 belonging to said corporation; that the value affixed to
37 such property is, in my opinion, its true and actual

38 value, by which I mean the price at which it would sell
39 if voluntarily offered for sale on such terms as are
40 usually employed in selling such property, and not the
41 price which might be realized at a forced or auction
42 sale; and said corporation has not, to my knowledge,
43 during the sixty-day period immediately prior to the
44 first day of the assessment year converted any of its
45 assets into nontaxable securities or notes or other
46 evidence of indebtedness for the purpose of evading the
47 assessment of taxes thereon; so help me, God.

48

49 The officer administering such oath shall append
50 thereto the following certificate, viz:

51 Subscribed and sworn to before me by
52 _____ this the _____ day of _____,
53 19____.

54

CHAPTER 193

(Com. Sub. for H. B. 2703—By Delegates Mezzatesta and Murphy)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article six-b, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the homestead property tax exemption; requiring an owner to legally reside in the state for the four consecutive taxable years and have paid taxes on any homestead in this state for the four consecutive taxable years prior to filing of exemption claim in order to receive such exemption and providing an exception thereto; requiring proof of residence; and defining legally resided.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article six-b, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6B. HOMESTEAD PROPERTY TAX EXEMPTION.

§11-6B-2. Definitions.

§11-6B-3. Twenty thousand dollar homestead exemption allowed.

§11-6B-2. Definitions.

1 For purposes of this article, the term:

2 (1) "Assessed value" means the value of property as
3 determined under article three of this chapter.

4 (2) "Claimant" means a person who is age sixty-five
5 or older or who is certified as being permanently and
6 totally disabled, and who owns a homestead that is used
7 and occupied by the owner thereof exclusively for
8 residential purposes.

9 (3) "Homestead" means a single family residential
10 house, including a modular home, and the land sur-
11 rounding such structure; or a mobile home regardless
12 of whether the land upon which such mobile home is
13 situated is owned or leased.

14 (4) "Legally resided" means the person shall have been
15 domiciled in this state for more than six consecutive
16 months of the taxable year.

17 (5) "Owner" means the person who is possessed of the
18 homestead, whether in fee or for life. A person seized
19 or entitled in fee subject to a mortgage or deed of trust
20 securing a debt or liability shall be deemed the owner
21 until the mortgagee or trustee takes possession, after
22 which such mortgagee or trustee shall be deemed the
23 owner. A person who has an equitable estate of freehold,
24 or is a purchaser of a freehold estate who is in possession
25 before transfer of legal title shall also be deemed the
26 owner. Personal property mortgaged or pledged shall,
27 for the purpose of taxation, be deemed the property of
28 the party in possession.

29 (6) "Permanently and totally disabled" means a person
30 who is unable to engage in any substantial gainful
31 activity by reason of any medically determinable
32 physical or mental condition which can be expected to
33 result in death or which has lasted or can be expected
34 to last for a continuous period of not less than twelve
35 months.

36 (7) "Sixty-five years of age or older" includes a person
37 who attains the age of sixty-five on or before the
38 thirtieth day of June following the July first assessment
39 date.

40 (8) "Used and occupied exclusively for residential
41 purposes" means that the property is used as an abode,
42 dwelling or habitat for more than six consecutive
43 months of the year by the owner and that the property
44 is used only as an abode, dwelling or habitat to the
45 exclusion of any commercial use: *Provided*, That this
46 six-month period shall not prevent a prior resident from
47 filing a claim to exemption in accordance with section
48 three, article six-b, chapter eleven of this code.

49 (9) "Tax year" means the calendar year following the
50 July first assessment day.

**§11-6B-3. Twenty thousand dollar homestead exemption
allowed.**

1 (a) *General*.—An exemption from ad valorem prop-
2 erty taxes shall be allowed for the first twenty thousand
3 dollars of assessed value of a homestead that is used and
4 occupied by the owner thereof exclusively for residential
5 purposes, when such owner is sixty-five years of age or
6 older or is certified as being permanently and totally
7 disabled: *Provided*, That the owner has legally resided
8 in the state of West Virginia for the four consecutive
9 taxable years and has paid taxes on any homestead in
10 this state for the four taxable years prior to filing a
11 claim for exemption: *Provided, however*, That when a
12 resident of West Virginia establishes residency out of
13 West Virginia and subsequently returns and reestab-
14 lishes residency in West Virginia within a period of five
15 years, such resident may file a claim for exemption
16 without regard to the requirement of four years
17 consecutive residency: *Provided further*, That such
18 resident show proof of residency including, but not
19 limited to, either a voter's registration card issued in
20 this state or a motor vehicles registration card issued in
21 this state. Only one exemption shall be allowed for each
22 homestead used and occupied exclusively for residential
23 purposes by the owner thereof, regardless of the number
24 of qualified owners residing therein.

25 **(b) Attachment of exemption.**—This exemption shall
26 attach to the homestead occupied by the qualified owner
27 on the July first assessment date and shall be applicable
28 to taxes for the following tax year. An exemption shall
29 not be transferred to another homestead until the
30 following July first. If the homestead of an owner
31 qualified under this article is transferred by deed, will
32 or otherwise, the twenty thousand dollar exemption
33 shall be removed from the property on the next July
34 first assessment date unless the new owner qualifies for
35 the exemption.

CHAPTER 194

(S. B. 622—Originating in the Committee on Ways and Means)

[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two-e, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the business and occupation tax; providing definitions relating to net number of dekatherms injected and withdrawn from a storage reservoir and amending definition of storage reservoir; and amending the calculation of the rate of tax imposed on persons engaging or continuing in state in the gas storage business.

Be it enacted by the Legislature of West Virginia:

That sections one and two-e, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-1. Definitions.

§11-13-2e. Business of gas storage; effective date.

§11-13-1. Definitions.

1 **(a) General.**—When used in this article, or in the

administration of this article, the terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used or by specific definition.

(b) *Terms defined.*

(1) "Person" or the term "company," herein used interchangeably, includes any individual, firm, copartnership, joint adventure, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(2) "Sale," "sales" or "selling" includes any transfer of or title to property or electricity, whether for money or in exchange for other property.

(3) "Taxpayer" means any person liable for any tax hereunder.

(4) "Gross income" means the gross receipts of the taxpayer, received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property (real or personal), or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and including all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of his business, and extension of credit in connection with the sale of any tangible personal property or service, and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other expenses whatsoever.

(5) "Gross proceeds of sales" means the value, whether

41 in money or other property, actually proceeding from
42 the sale of tangible property without any deduction on
43 account of the cost of property sold or expenses of any
44 kind.

45 (6) "Business" shall include all activities engaged in
46 or caused to be engaged in with the object of gain or
47 economic benefit, either direct or indirect. "Business"
48 shall include the rendering of gas storage service by any
49 person for the gain or economic benefit of any person,
50 including, but not limited to, the storage operator,
51 whether or not incident to any other business activity.

52 (7) "Gas" means either natural gas unmixed, or any
53 mixture of natural and artificial gas or any other gas.

54 (8) "Storage reservoir" means that portion of any
55 subterranean sand or rock stratum or strata into which
56 gas has been injected for the purpose of storage prior
57 to the first day of March, one thousand nine hundred
58 eighty-nine.

59 (9) "Gas storage service" means the injection of gas
60 into a storage reservoir, the storage of gas for any period
61 of time in a storage reservoir, or the withdrawal of gas
62 from a storage reservoir. Such gas may be owned by the
63 storage operator or any other person.

64 (10) "Net number of dekatherms of gas injected"
65 means the sum of the daily injection of dekatherms of
66 gas in excess of the sum of the daily withdrawals of
67 dekatherms of gas during a tax month.

68 (11) "Net number of dekatherms of gas withdrawn"
69 means the sum of the daily withdrawal of dekatherms
70 of gas in excess of the sum of the daily injection of
71 dekatherms of gas during a tax month.

72 (12) "Gas storage operator" means any person who
73 operates a storage reservoir or provides a storage
74 service as defined herein, either as owner or lessee.

75 (13) "Month" or "tax month" means the calendar
76 month.

77 (14) "Dekatherm" means the thermal energy unit
78 equal to one million British thermal units (BTU's) or

79 the equivalent of one thousand cubic feet of gas having
80 a heating content of one thousand BTU's per cubic foot.

81 (15) "Taxable year" means the calendar year, or the
82 fiscal year ending during such calendar year, upon the
83 basis of which tax liability is computed under this
84 article. "Taxable year" means, in case of a return made
85 for a fractional part of a year under the provisions of
86 this article, or under regulations promulgated by the tax
87 commissioner, the period for which such return is made.

§11-13-2e. Business of gas storage; effective date.

1 (a) *Rate of tax.*—Upon every person engaging or
2 continuing within this state in any gas storage business
3 utilizing one or more gas storage reservoirs located
4 within this state, the tax imposed by section two of this
5 article shall be equal to five cents multiplied by the sum
6 of either (1) the net number of dekatherms of gas
7 injected into such a gas storage reservoir during a tax
8 month or (2) the net number of dekatherms of gas
9 withdrawn from such a gas storage reservoir during a
10 tax month, whichever is applicable for that month,
11 whether or not such gas is owned by, or is injected or
12 withdrawn for, the storage operator or any other person.
13 Fractional parts of dekatherms shall be included in the
14 measure of tax as provided in regulations promulgated
15 by the tax commissioner.

16 (b) *Effective date.*—The measure of tax under this
17 section shall include gas injected into, or withdrawn
18 from, a gas storage reservoir after the twenty-eighth
19 day of February, one thousand nine hundred eighty-
20 nine.

21 (c) *Administration; installment payments.*—The tax
22 due under this section shall be administered, collected
23 and enforced as provided in this article and articles nine
24 and ten of this chapter. The tax due under this section
25 shall be remitted in periodic installments as provided in
26 section four of this article, except that such periodic
27 installment payments shall be remitted on or before the
28 twentieth day of the month following the month or
29 quarter in which the tax accrues.

CHAPTER 195

(H. B. 2716—By Delegates Whitt and Farley)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sales tax returns and payment; and providing that certain amounts in the drunk driving prevention fund may be used by the department of public safety personal services for the fiscal year one thousand nine hundred ninety.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-16. Tax return and payment; exception.

1 The taxes levied by this article shall be due and
2 payable in monthly installments, on or before the
3 fifteenth day of the month next succeeding the month
4 in which the tax accrued. The taxpayer shall, on or
5 before the fifteenth day of each month, make out and
6 mail to the tax commissioner a return for the preceding
7 month, in the form prescribed by the tax commissioner,
8 showing: (a) The total gross proceeds of his business for
9 that month; (b) the gross proceeds of his business upon
10 which the tax is based; (c) the amount of the tax for
11 which he is liable; and (d) any further information
12 necessary in the computation and collection of the tax
13 which the tax commissioner may require. A remittance
14 for the amount of the tax shall accompany the return:
15 *Provided*, That notwithstanding the provisions of section
16 thirty of this article, any such tax collected by the
17 alcohol beverage control commissioner from persons or
18 organizations licensed under authority of article seven,

19 chapter sixty of this code shall be paid into a revolving
20 fund account in the state treasury, designated the drunk
21 driving prevention fund, to be administered by the
22 commission on drunk driving prevention, subject to
23 appropriations by the Legislature: *Provided, however,*
24 That any balances in the drunk driving prevention fund
25 on the first day of July, one thousand nine hundred
26 eighty-nine, and all moneys received into such fund
27 during the fiscal year commencing the first day of July,
28 one thousand nine hundred eighty-nine, may, up to a
29 maximum of seven hundred fifty thousand dollars, be
30 used by the department of public safety for personal
31 services, employee benefits and unclassified expendi-
32 tures for the time period commencing the first day of
33 July, one thousand nine hundred eighty-nine, and
34 ending the last day of June, one thousand nine hundred
35 ninety, subject to appropriation by the Legislature. A
36 monthly return shall be signed by the taxpayer or his
37 duly authorized agent.

CHAPTER 196

(H. B. 2711—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed April 7, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the personal income tax and updating the meaning of certain terms.

Be it enacted by the Legislature of West Virginia:

That section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 Any term used in this article shall have the same

2 meaning as when used in a comparable context in the
3 laws of the United States relating to income taxes,
4 unless a different meaning is clearly required. Any
5 reference in this article to the laws of the United States
6 shall mean the provisions of the Internal Revenue Code
7 of 1986, as amended, and such other provisions of the
8 laws of the United States as relate to the determination
9 of income for federal income tax purposes. All amend-
10 ments made to the laws of the United States prior to
11 the first day of January, one thousand nine hundred
12 eighty-nine, shall be given effect in determining the
13 taxes imposed by this article for any taxable year
14 beginning the first day of January, one thousand nine
15 hundred eighty-eight, or thereafter, but no amendment
16 to the laws of the United States made on or after the
17 first day of January, one thousand nine hundred eighty-
18 nine, shall be given effect.

CHAPTER 197

(Com. Sub. for S. B. 189—By Senator Hawse)

[Passed April 7, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increase of county excise tax on transfer of real estate; requiring county commission to approve increase; and requiring notice of meeting at which such increase is to be considered.

Be it enacted by the Legislature of West Virginia:

That section two, article twenty-two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING REAL PROPERTY.

§11-22-2. Rate of tax; when and by whom payable; additional county tax.

1 Every person who delivers, accepts or presents for
2 recording any document, or in whose behalf any
3 document is delivered, accepted or presented for
4 recording, shall be subject to pay for and in respect to
5 the transaction or any part thereof, a state excise tax
6 upon the privilege of transferring title to real estate at
7 the rate of one dollar and ten cents for each five hundred
8 dollars' value or fraction thereof as represented by such
9 document as defined in section one hereof, which state
10 tax shall be payable at the time of delivery, acceptance
11 or presenting for recording of such document.

12 Effective January first, one thousand nine hundred
13 sixty-eight and thereafter, there is hereby imposed an
14 additional county excise tax for the privilege of
15 transferring title to real estate at the rate of fifty-five
16 cents for each five hundred dollars' value or fraction
17 thereof as represented by such document as defined in
18 section one hereof, which county tax shall be payable at
19 the time of delivery, acceptance or presenting for
20 recording of such document: *Provided*, That after the
21 first day of July, one thousand nine hundred eighty-nine,
22 the county may increase said excise tax to an amount
23 equal to the state excise tax. The additional tax hereby
24 imposed is declared to be a county tax and to be used
25 for county purposes: *Provided, however*, That only one
26 such state tax and one such county tax shall be paid on
27 any one document and shall be collected in the county
28 where the document is first admitted to record, and the
29 same shall be paid by the grantor therein unless the
30 grantee accepts the same without such tax having been
31 paid, in which event such tax shall be paid by the
32 grantee: *Provided further*, That on any transfer of real
33 property from a trustee or a county clerk transferring
34 real estate sold for taxes, such tax shall be paid by the
35 grantee.

36 The county excise tax imposed under this section may
37 not be increased in any county unless the increase is
38 approved by a majority vote of the members of the
39 county commission of such county. Any county commis-
40 sion intending to increase the excise tax imposed in its
41 county shall publish a notice of its intention to increase

42 such tax not less than thirty days nor more than sixty
43 days prior to the meeting at which such increase will
44 be considered, such notice to be published as a Class I
45 legal advertisement in compliance with the provisions of
46 article three, chapter fifty-nine of this code, and the
47 publication area shall be the county in which such
48 county commission is located.

CHAPTER 198

(H. B. 2712—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed April 4, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and three-a, article twenty-three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the business franchise tax; updating the meaning of certain terms; expanding and clarifying certain definitions; and providing the tax commissioner authority to determine additional items in capital so that income is properly reflected.

Be it enacted by the Legislature of West Virginia:

That sections three and three-a, article twenty-three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-3. Meaning of terms; specific terms defined.

§11-23-3a. Meaning of terms; general rule.

§11-23-3. Meaning of terms; specific terms defined.

- 1 (a) *General*.—When used in this article, or in the
- 2 administration of this article, terms defined in this
- 3 section shall have the meanings ascribed to them herein
- 4 unless a different meaning is clearly required by either
- 5 the context in which the term is used, or by specific
- 6 definition in this article.

7 (b) *Terms defined.*

8 (1) *Business income.*—The term “business income”
9 means income arising from transactions and activity in
10 the regular course of the taxpayer’s trade or business
11 and includes income from tangible and intangible
12 property if the acquisition, management and disposition
13 of the property constitute integral parts of the taxpayer’s
14 regular trade or business operations.

15 (2) *Capital.*—The term “capital” of a taxpayer shall
16 mean:

17 (A) *Corporations.*—In the case of a corporation,
18 except an electing small business corporation, the
19 average of the beginning and ending year balances of
20 the sum of the following entries from Schedule L of
21 Federal Form 1120, prepared following generally
22 accepted accounting principles and as filed by the
23 taxpayer with the Internal Revenue Service for the
24 taxable year:

25 (i) The value of all common stock and preferred stock
26 of the taxpayer;

27 (ii) The amount of paid-in or capital surplus;

28 (iii) The amount of retained earnings, appropriated
29 and unappropriated;

30 (iv) Less the cost of treasury stock.

31 (B) *S Corporations.*—In the case of an electing small
32 business corporation, the average of the beginning and
33 ending year balances of the sum of the following entries
34 from Schedule L of Federal Form 1120S, prepared
35 following generally accepted accounting principles and
36 as filed by the taxpayer with the Internal Revenue
37 Service for the taxable year:

38 (i) The value of all common stock and preferred stock
39 of the taxpayer;

40 (ii) The amount of paid-in or capital surplus;

41 (iii) Retained earnings, appropriated and
42 unappropriated;

43 (iv) The amount of shareholders' undistributed tax-
44 ble income;

45 (v) The amount of the accumulated adjustments
46 account;

47 (vi) The amount of the other adjustments account;

48 (vii) Less the cost of treasury stock.

49 (C) *Partnerships*.—In the case of a partnership, the
50 average of the beginning and ending year balances of
51 the value of partner's capital accounts from Schedule L
52 of Federal Form 1065, prepared following accepted
53 accounting principles and as filed by the taxpayer with
54 the Internal Revenue Service for the taxable year.

55 (D) *Additional items in capital*.—The term "capital"
56 for purposes of this article shall include such adjust-
57 ments thereto as the tax commissioner deems necessary
58 to properly reflect capital and such additional items
59 from the accounts of the taxpayer as the tax commis-
60 sioner may by regulation prescribe, which fairly
61 represent the net equity of the taxpayer as defined in
62 accordance with generally accepted accounting
63 principles.

64 (E) *Allowance for certain government obligations and*
65 *obligations secured by residential property*.—As to both
66 corporations and partnerships, capital shall be multip-
67 lied by a fraction equal to one minus a fraction:

68 (i) The numerator of which is the average of the
69 monthly beginning and ending account balances during
70 the taxable year (account balances to be determined at
71 cost in the same manner that such obligations, invest-
72 ments and loans are reported on Schedule L of the
73 Federal Form 1120 or Federal Form 1065) of the
74 following:

75 (I) Obligations and securities of the United States, or
76 of any agency, authority, commission or instrumentality
77 of the United States and any other corporation or entity
78 created under the authority of the United States
79 Congress for the purpose of implementing or furthering
80 an objective of national policy;

81 (II) Obligations of this state and any political subdi-
82 vision of this state;

83 (III) Investments or loans primarily secured by
84 mortgages, or deeds of trust, on residential property
85 located in this state and occupied by nontransients; and

86 (IV) Loans primarily secured by a lien or security
87 agreement on residential property in the form of a
88 mobile home, modular home or double-wide, located in
89 this state and occupied by nontransients.

90 (ii) The denominator of which is the average of the
91 monthly beginning and ending account balances of the
92 total assets of the taxpayer as shown on Schedule L of
93 Federal Form 1120, as filed by the taxpayer with the
94 Internal Revenue Service or, in the case of partnerships,
95 Schedule L of Federal Form 1065, as filed by the
96 taxpayer with the Internal Revenue Service.

97 (3) *Commercial domicile*.—The term “commercial
98 domicile” means the principal place from which the
99 trade or business of the taxpayer is directed or
100 managed.

101 (4) *Commissioner or tax commissioner*.—The terms
102 “commissioner” or “tax commissioner” are used inter-
103 changeably herein and mean the tax commissioner of
104 the state of West Virginia, or his delegate.

105 (5) *Compensation*.—The term “compensation” means
106 wages, salaries, commissions and any other form of
107 remuneration paid to employees for personal services.

108 (6) *Corporation*.—The term “corporation” includes
109 any corporations, S corporation, joint-stock company
110 and any association or other organization which is
111 taxable as a corporation under federal income tax laws
112 or the income tax laws of this state.

113 (7) *Delegate*.—The term “delegate” in the phrase “or
114 his delegate,” when used in reference to the tax
115 commissioner, means any officer or employee of the
116 state tax department duly authorized by the tax
117 commissioner directly, or indirectly by one or more
118 redelegations of authority, to perform the functions

119 mentioned or described in this article or regulations
120 promulgated thereunder.

121 (8) *Doing business*.—The term “doing business” means
122 any activity of a corporation or partnership which enjoys
123 the benefits and protection of the government and laws
124 of this state, except the activity of agriculture and
125 farming, which shall mean the production of food, fiber
126 and woodland products (but not timbering activity) by
127 means of cultivation, tillage of the soil and by the
128 conduct of animal, livestock, dairy, apiary, equine or
129 poultry husbandry, horticulture, or any other plant or
130 animal production and all farm practices related, usual
131 or incidental thereto, including the storage, packing,
132 shipping and marketing, but not including any manu-
133 facturing, milling or processing of such products by
134 persons other than the producer thereof.

135 The activity of agriculture and farming shall mean
136 such activity, as above defined, occurring on not less
137 than five acres of land and the improvements thereon,
138 used in the production of the aforementioned activities,
139 and shall mean the production of at least one thousand
140 dollars of products per annum through the conduct of
141 such principal business activities as set forth in section
142 ten, article one-a, chapter eleven of this code.

143 (9) *Domestic corporation*.—The term “domestic corpo-
144 ration” means a corporation organized under the laws
145 of this state, and certain corporations organized under
146 the laws of the state of Virginia before the twentieth day
147 of June, one thousand eight hundred sixty-three. Every
148 other corporation is a foreign corporation.

149 (10) *Federal Form 1120*.—The term “Federal Form
150 1120” means the annual federal income tax return of
151 any corporation made pursuant to the United States
152 Internal Revenue Code of 1986, as amended, or in
153 successor provisions of the laws of the United States, in
154 respect to the taxable income of a corporation, and filed
155 with the federal Internal Revenue Service. In the case
156 of a corporation that elects to file a federal income tax
157 return as part of an affiliated group, but files as a
158 separate corporation under this article, then as to such

159 corporation Federal Form 1120 means its pro forma
160 Federal Form 1120.

161 (11) *Federal Form 1065*.—The term “Federal Form
162 1065” means the annual federal income tax return of a
163 partnership made pursuant to Section 6031 of the
164 United States Internal Revenue Code of 1986, as
165 amended or renumbered, or in successor provisions of
166 the laws of the United States, in respect to the taxable
167 income of a partnership, and filed with the federal
168 Internal Revenue Service.

169 (12) *Fiduciary*.—The term “fiduciary” means, and
170 includes, a guardian, trustee, executor, administrator,
171 receiver, conservator or any person acting in any
172 fiduciary capacity for any person.

173 (13) *Financial organization*.—The term “financial
174 organization” includes any bank, banking association,
175 trust company, industrial loan company, small loan
176 company or licensee, building and loan association,
177 savings and loan association, finance company, invest-
178 ment company, investment broker or dealer, and any
179 other similar business organization at least ninety
180 percent of the assets of which consist of intangible
181 personal property and at least ninety percent of the
182 gross receipts of which consist of dividends, interest and
183 other charges derived from the use of money or credit.

184 (14) *Fiscal year*.—The term “fiscal year” means an
185 accounting period of twelve months ending on any day
186 other than the last day of December, and on the basis
187 of which the taxpayer is required to report for federal
188 income tax purposes.

189 (15) *Includes and including*.—The term “includes” and
190 “including” when used in a definition contained in this
191 article shall not be deemed to exclude other things
192 otherwise within the meaning of the term being defined.

193 (16) *Parent and subsidiary corporations*.—A corpora-
194 tion which owns on average during the taxable year
195 more than fifty percent of the stock of all classes of
196 another corporation is defined to be the “parent
197 corporation” and the corporation which is so owned by
198 the parent is defined to be a “subsidiary corporation.”

199 (17) *Partnership and partner*.—The term “partner-
200 ship” includes a syndicate, group, pool, joint venture or
201 other unincorporated organization through or by means
202 of which any business, financial operation or venture is
203 carried on, and which is not a trust or estate, a
204 corporation or a sole proprietorship or an unincorpo-
205 rated organization which under Section 761 of the
206 Internal Revenue Code of 1986, as amended, and is not
207 treated as a partnership for the taxable year for federal
208 income tax purposes. The term “partner” includes a
209 member in such a syndicate, group, pool, joint venture
210 or other unincorporated organization which is a
211 partnership.

212 (18) *Person*.—The term “person” includes any corpo-
213 ration or partnership.

214 (19) *Pro forma return*.—The term “pro forma return”
215 when used in this article means the return which the
216 taxpayer would have filed with the Internal Revenue
217 Service had it not elected to file federally as part of a
218 consolidated group.

219 (20) *Sales*.—The term “sales” means all gross receipts
220 of the taxpayer that are “business income,” as defined
221 in this section.

222 (21) *State*.—The term “state” means a state of the
223 United States, the District of Columbia, the Common-
224 wealth of Puerto Rico, or any territory or possession of
225 the United States, and any foreign country or political
226 subdivision thereof.

227 (22) *Stock*.—The term “stock” includes shares in a
228 corporation, association or joint-stock company. It shall
229 not include nonvoting stock which is limited and
230 preferred as to dividends, or treasury stock. “Stock
231 owned by a corporation” shall include stock owned
232 directly by such corporation and stock which is subject
233 to an option to acquire stock.

234 (23) *Taxable year*.—The term “taxable year” means
235 the calendar year, or the fiscal year ending during such
236 calendar year, upon the basis of which tax liability is
237 computed under this article. “Taxable year” means, in

238 case of a return made for a fractional part of a year
239 (short taxable year) under the provisions of this article,
240 or under regulations promulgated by the tax commis-
241 sioner, the period for which such return is made.

242 (24) *Taxable in another state.*—The term “taxable in
243 another state” for purposes of apportionment under this
244 article, means a taxpayer who:

245 (A) Is subject to a net income tax, a franchise tax
246 measured by net income, a franchise tax for the
247 privilege of doing business or a corporate stock tax; or

248 (B) Would be subject to a net income tax if such other
249 state imposed such a tax.

250 (25) *Taxpayer.*—The term “taxpayer” means any
251 person (as defined in this section) subject to the tax
252 imposed by this article.

253 (26) *This code.*—The term “this code” means the code
254 of West Virginia, one thousand nine hundred thirty-one,
255 as amended.

256 (27) *This state.*—The term “this state” means the state
257 of West Virginia.

258 (28) *Treasury stock.*—The term “treasury stock”
259 means shares of a corporation which have been issued
260 and have been subsequently acquired by and belong to
261 such corporation, and have not been canceled or restored
262 to the status of authorized but unissued shares. Treasury
263 stock is deemed to be issued shares, but not outstanding
264 shares.

§11-23-3a. Meaning of terms; general rule.

1 Any term used in this article shall have the meaning
2 as when used in a comparable context in the laws of the
3 United States relating to federal income taxes, unless a
4 different meaning is clearly required by the context or
5 by definition of this article. Any reference in this article
6 to the laws of the United States, or to the Internal
7 Revenue Code, or to the federal income tax law shall
8 mean the provisions of the laws of the United States as
9 related to the determination of income for federal
10 income tax purposes. All amendments made to the laws

11 of the United States prior to the first day of January,
12 one thousand nine hundred eighty-nine, shall be given
13 effect in determining the taxes imposed by this article
14 for the tax period beginning the first day of January,
15 one thousand nine hundred eighty-eight, and thereafter,
16 but no amendment to laws of the United States made
17 on or after the first day of January, one thousand nine
18 hundred eighty-nine, shall be given effect.

CHAPTER 199

(H. B. 2709—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed April 4, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the corporation net income tax and updating the meaning of certain terms.

Be it enacted by the Legislature of West Virginia:

That section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article shall have the same
2 meaning as when used in a comparable context in the
3 laws of the United States relating to federal income
4 taxes, unless a different meaning is clearly required by
5 the context or by definition in this article. Any reference
6 in this article to the laws of the United States shall mean
7 the provisions of the Internal Revenue Code of 1986, as
8 amended, and such other provisions of the laws of the
9 United States as relate to the determination of income
10 for federal income tax purposes. All amendments made
11 to the laws of the United States prior to the first day
12 of January, one thousand nine hundred eighty-nine,
13 shall be given effect in determining the taxes imposed

14 by this article for any taxable year beginning the first
15 day of January, one thousand nine hundred eighty-eight,
16 and thereafter, but no amendment to the laws of the
17 United States effective on or after the first day of
18 January, one thousand nine hundred eighty-nine, shall
19 be given any effect.

20 (b) The term "Internal Revenue Code of 1986" means
21 the Internal Revenue Code of the United States enacted
22 by the "Federal Tax Reform Act of 1986" and includes
23 the provisions of law formerly known as the Internal
24 Revenue Code of 1954, as amended, and in effect when
25 the "Federal Tax Reform Act of 1986" was enacted, that
26 were not amended or repealed by the "Federal Tax
27 Reform Act of 1986." Except when inappropriate, any
28 references in any law, executive order, or other
29 document:

30 (1) To the Internal Revenue Code of 1954 shall include
31 reference to the Internal Revenue Code of 1986, and

32 (2) To the Internal Revenue Code of 1986 shall include
33 a reference to the provisions of law formerly known as
34 the Internal Revenue Code of 1954.

CHAPTER 200

(S. B. 481—Originating in the Committee on Ways and Means)

[Passed April 4, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty-four, chapter eleven of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, by adding thereto a new section,
designated section seven-a, relating to the corporation
net income tax; providing special rules for motor
carriers to apportion their business income; permitting
tax commissioner to specify other special formula or
formulae; and providing effective date.

Be it enacted by the Legislature of West Virginia:

That article twenty-four, chapter eleven of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,

be amended by adding thereto a new section, designated section seven-a, to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-7a. Special apportionment rules.

1 (a) *General.*—The Legislature hereby finds that the
2 general formula set forth in section seven of this article
3 for apportioning the business income of corporations
4 taxable in this as well as in another state is inappropriate
5 for use by certain businesses due to the particular
6 characteristics of those businesses or the manner in
7 which such businesses are conducted. Accordingly, the
8 general formula set forth in section seven of this article
9 may not be used to apportion business income when a
10 specific formula established under this section applies
11 to the business of the taxpayer. The Legislature further
12 finds that the tax commissioner has the authority under
13 chapter eleven of this code to promulgate by legislative
14 regulations special formula or formulae by which a
15 specified classification of taxpayers is required to
16 apportion its business income. Accordingly, this section
17 shall not be construed as prohibiting the tax commis-
18 sioner from exercising his authority to promulgate
19 legislative regulations which set forth such other special
20 formula or formulae and in that regulation requiring a
21 specified classification of taxpayers to apportion their
22 business income as provided in that special formula,
23 instead of apportioning their business income employing
24 the general formula set forth in section seven of this
25 article, when he believes that such formula or formulae
26 will more fairly and more reasonably allocate and
27 apportion to this state the adjusted federal taxable
28 income of the taxpayer. Additionally, nothing in this
29 section shall prevent the tax commissioner from
30 requiring the use, or the taxpayer from petitioning to
31 use, as the case may be, some other method of allocation
32 or apportionment as provided in subsection (h), section
33 seven of this article. Permission granted to a taxpayer
34 under subsection (h), section seven of this article to use
35 another method of allocation or apportionment shall be

valid for a period of five consecutive taxable years, beginning with the taxable year for which such authorization is granted, provided there is no material change of fact or law which materially affects the fairness and reasonableness of the result reached under such other method of allocation or apportionment. Upon expiration of any such authorization the taxpayer may again petition under section seven of this article to use another method of apportionment. A material change of fact or law which materially affects the fairness and reasonableness of the result reached under such other method of allocation or apportionment automatically revokes authorization to use that other method beginning with the taxable year in which the material change of fact occurred or the taxable year for which a material change in law first takes effect, whichever occurs first.

(b) *Motor carriers.*—Motor carriers of property or passengers shall apportion the business income component of their adjusted federal taxable income to this state by the use of the ratio which their total vehicle miles in this state during the taxable year bears to total vehicle miles of the corporation everywhere during the taxable year, except as otherwise provided in this subsection.

(1) *Definitions.*—For purposes of this subsection (b):

(A) “Motor carrier” means any person engaging in the transportation of passengers or property or both, for compensation by motor propelled vehicle over roads in this state, whether traveling on a scheduled route or otherwise.

(B) “Vehicle mile” means the operation of a motor carrier over a distance of one mile, whether owned or operated by a corporation.

(2) The provisions of this subsection (b) shall not apply to a motor carrier:

(A) Which neither owns nor rents real or tangible personal property located in this state, which has made no pick-ups or deliveries within this state, and which has traveled less than fifty thousand vehicle miles in this state during the taxable year; or

76 (B) Which neither owns nor rents any real or tangible
77 personal property located in this state, except vehicles,
78 and which makes no more than twelve trips into or
79 through this state during a taxable year.

80 The mileage traveled under fifty thousand miles or
81 the mileage traveled in this state during the twelve trips
82 into or through this state may not represent more than
83 five percent of the total motor vehicle miles traveled in
84 all states during the taxable year.

85 (c) The manner in which the taxpayer is required or
86 permitted to apportion its business income under this
87 article does not control or otherwise affect how that
88 taxpayer apportions its capital for purposes of the
89 business franchise tax imposed by article twenty-three
90 of this chapter.

91 (d) *Effective date.*—The provisions of this section shall
92 apply to all taxable years beginning on or after the first
93 day of January, one thousand nine hundred eighty-nine,
94 and to all years that begin prior to that date which are
95 still open to audit and assessment.

CHAPTER 201

(Com. Sub. for S. B. 303—By Senators Tucker, Mr. President, J. Manchin,
Jones and Loehr)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a; to amend and reenact section nine, article twelve of said chapter; to amend article thirteen-d of said chapter by adding thereto a new section, designated section three-b; to amend and reenact sections two, four-b, seven, eight-a, nine, nine-b, nine-c, nine-d, eighteen and thirty-three, article fifteen of said chapter; to further amend said article fifteen by adding thereto a new section, designated section eight-b; to amend and reenact sections three-b, three-c, three-d and twenty-

nine, article fifteen-a of said chapter; to further amend said article fifteen-a by adding thereto two new sections, designated sections two-a and six-a; to amend and reenact section twelve, article twenty-one of said chapter; to amend article twenty-four of said chapter by adding thereto a new section, designated section nine-c; and to amend and reenact section three, article one, chapter seventeen of said code, all relating to the Tax Act of 1989; allowing tax commissioner to be represented by staff attorneys in legal proceedings; limiting the penalty for failure to renew business registration certificates; allowing credit for research and development projects to be applied against corporation net income taxes; amending definitions of terms used in consumers sales tax; making purchaser liable for payment of sales tax due that was not paid to vendor; equalizing sales tax burden on property use in business as between integrated and nonintegrated businesses; providing transition rules; requiring registration of security for payment of sales tax and from nonresident contractors; amending existing exemptions from sales tax and adding several new exemptions; providing methods for claiming exemptions; making issuance of direct pay permits discretionary; combining consumers sales tax and use tax direct pay permit returns; providing rules for filing such returns; dedicating sales tax on aviation fuel to state aeronautical commission for use to obtain federal funds for airports; specifying effective dates; equalizing use tax burden on property used in business as between integrated and nonintegrated businesses; providing methods for claiming use tax exemptions; making issuance of direct pay permits discretionary; combining use tax, direct pay permit and sales tax direct pay permits to be combined and providing return due dates; requiring certain other out-of-state retailers to collect use taxes on sales of property or taxable services to customers in this state; specifying effective dates; providing additional adjustments to federal adjusted gross income for personal income tax purposes; allowing credit against corporation net income taxes for research and development expenditures; amending definition of "road", "public

road" and "highway"; making other technical corrections; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section ten-a; that section nine, article twelve of said chapter be amended and reenacted; that article thirteen-d of said chapter be amended by adding thereto a new section, designated section three-b; that sections two, four-b, seven, eight-a, nine, nine-b, nine-c, nine-d, eighteen and thirty-three, article fifteen of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eight-b; that sections three-b, three-c, three-d and twenty-nine, article fifteen-a of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections two-a and six-a; that section twelve, article twenty-one of said chapter be amended and reenacted; that article twenty-four of said chapter be amended by adding thereto a new section, designated section nine-c; and that section three, article one, chapter seventeen be amended and reenacted, all to read as follows:

Chapter

11. Taxation.

17. Roads and Highways.

CHAPTER 11. TAXATION.

Article

10. Procedure and Administration.

12. Business Registration Tax.

13D. Business and Occupation Tax Credit for Industrial Expansion and Revitalization and for Research and Development Projects.

15. Consumers Sales Tax.

15.A. Use Tax.

21. Personal Income Tax.

24. Corporation Net Income Tax.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-10a. Legal services.

- 1 Notwithstanding anything in this code to the contrary,
- 2 the tax commissioner may utilize any full-time attorney

3 or attorneys employed by the tax department as staff
4 counsel to institute, prosecute, or defend any suits,
5 actions, or other legal proceedings, and it shall be in the
6 sole judgment and discretion of the tax commissioner
7 whether to utilize such staff attorney or attorneys or the
8 attorney general, whether on a case by case basis or for
9 all of the needs of the department for legal services:
10 *Provided*, That nothing contained herein may be
11 construed to authorize the administrator to engage, hire
12 or employ outside counsel without first obtaining the
13 permission of the attorney general.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-9. Penalties.

1 In addition to the provisions of article ten of this
2 chapter, any person engaging in or prosecuting any
3 business contrary to the provisions of this article,
4 whether without obtaining a business registration
5 certificate therefor before commencing the same, or by
6 continuing the same after the termination of the
7 effective period of any such certificate may, in addition
8 to paying the business registration tax, additions to tax,
9 penalties and interest, be liable for a penalty of fifty
10 dollars for each month or fraction thereof during which
11 he has been in default of the business registration tax.
12 It shall be the duty of the tax commissioner to collect
13 the full amount of the business registration tax,
14 additions to tax, interest, and all penalties imposed:
15 *Provided*, That in no event may the total penalty for
16 failure to renew a business registration certificate
17 exceed fifty dollars per registration certificate.

ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL EXPANSION AND REVITALIZA- TION AND FOR RESEARCH AND DEVELOP- MENT PROJECTS.

§11-13D-3b. Application of credit after June 30, 1989.

1 For taxable years ending on and after the first day
2 of July, one thousand nine hundred eighty-nine, the
3 credits allowed under section three shall continue to be
4 applied as provided in section three-a. In addition, the
5 credit allowed under subsection (f) of section three that

6 remains after its application as provided in section
7 three-a of this article shall be applied to reduce the tax
8 imposed by article twenty-four of this chapter: *Provided,*
9 That this credit may not reduce by more than fifty
10 percent the amount of the net tax liability of the
11 taxpayer for the taxable year under article twenty-four
12 of this chapter, which amount of net tax liability shall
13 be determined before application of the credit allowed
14 by article thirteen-c of this chapter.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-2. Definitions.

§11-15-4b. Liability of purchaser; assessment and collection.

§11-15-7. Tax on gross proceeds of sales or value of manufactured, etc., products.

§11-15-8a. Contractors.

§11-15-8b. Nonresident contractor—Registration, bond, etc.

§11-15-9. Exemptions.

§11-15-9b. Method for claiming exemptions, refunds of tax, credit against other taxes.

§11-15-9c. Delivery of a certificate of exemption in lieu of tax.

§11-15-9d. Direct pay permits.

§11-15-18. Tax on gasoline and special fuel.

§11-15-33. Effective date.

§11-15-2. Definitions.

1 For the purpose of this article:

2 (a) "Persons" means any individual, partnership,
3 association, corporation, state or its political subdivi-
4 sions or agency of either, guardian, trustee, committee,
5 executor or administrator.

6 (b) "Tax commissioner" means the state tax
7 commissioner;

8 (c) "Gross proceeds" means the amount received in
9 money, credits, property or other consideration from
10 sales and services within this state, without deduction
11 on account of the cost of property sold, amounts paid for
12 interest or discounts or other expenses whatsoever.
13 Losses shall not be deducted, but any credit or refund
14 made for goods returned may be deducted.

15 (d) "Sale," "sales" or "selling" includes any transfer of
16 the possession or ownership of tangible personal

17 property for a consideration, including a lease or rental,
18 when the transfer or delivery is made in the ordinary
19 course of the transferor's business and is made to the
20 transferee or his agent for consumption or use or any
21 other purpose.

22 (e) "Vendor" means any person engaged in this state
23 in furnishing services taxed by this article or making
24 sales of tangible personal property.

25 (f) "Ultimate consumer" or "consumer" means a
26 person who uses or consumes services or personal
27 property.

28 (g) "Business" includes all activities engaged in or
29 caused to be engaged in with the object of gain or
30 economic benefit, direct or indirect, and all activities of
31 the state and its political subdivisions which involve
32 sales of tangible personal property or the rendering of
33 services when those service activities compete with or
34 may compete with the activities of other persons.

35 (h) "Tax" includes all taxes, interest and penalties
36 levied hereunder.

37 (i) "Service" or "selected service" includes all nonpro-
38 fessional activities engaged in for other persons for a
39 consideration, which involve the rendering of a service
40 as distinguished from the sale of tangible personal
41 property, but shall not include contracting, personal
42 services or the services rendered by an employee to his
43 employer or any service rendered for resale.

44 (j) "Purchaser" means a person who purchases tang-
45 ible personal property or a service taxed by this article.

46 (k) "Personal service" includes those:

47 (1) Compensated by the payment of wages in the
48 ordinary course of employment;

49 (2) Rendered to the person of an individual without,
50 at the same time, selling tangible personal property,
51 such as nursing, barbering, shoe shining, manicuring
52 and similar services.

53 (l) "Taxpayer" means any person liable for the tax
54 imposed by this article.

55 (m) "Drugs" includes all sales of drugs or appliances
56 to a purchaser, upon prescription of a physician or
57 dentist and any other professional person licensed to
58 prescribe.

59 (n) (1) "Directly used or consumed" in the activities of
60 manufacturing, transportation, transmission, communi-
61 cation or the production of natural resources means used
62 or consumed in those activities or operations which
63 constitute an integral and essential part of such
64 activities, as contrasted with and distinguished from
65 those activities or operations which are simply inciden-
66 tal, convenient or remote to such activities.

67 (2) Uses of property or consumption of services which
68 constitute direct use or consumption in the activities of
69 manufacturing, transportation, transmission, communi-
70 cation or the production of natural resources includes
71 only:

72 (A) In the case of tangible personal property, physical
73 incorporation of property into a finished product
74 resulting from manufacturing production or the produc-
75 tion of natural resources;

76 (B) Causing a direct physical, chemical or other
77 change upon property undergoing manufacturing
78 production or production of natural resources;

79 (C) Transporting or storing property undergoing
80 transportation, communication, transmission, manufac-
81 turing production, or production of natural resources;

82 (D) Measuring or verifying a change in property
83 directly used in transportation, communication, trans-
84 mission, manufacturing production or production of
85 natural resources;

86 (E) Physically controlling or directing the physical
87 movement or operation of property directly used in
88 transportation, communication, transmission, manufac-
89 turing production or production of natural resources;

90 (F) Directly and physically recording the flow of
91 property undergoing transportation, communication,

92 transmission, manufacturing production or production
93 of natural resources;

94 (G) Producing energy for property directly used in
95 transportation, communication, transmission, manufac-
96 turing production or production of natural resources;

97 (H) Facilitating the transmission of gas, water, steam
98 or electricity from the point of their diversion to
99 property directly used in transportation, communica-
100 tion, transmission, manufacturing production or produc-
101 tion of natural resources;

102 (I) Controlling or otherwise regulating atmospheric
103 conditions required for transportation, communication,
104 transmission, manufacturing production or production
105 of natural resources;

106 (J) Serving as an operating supply for property
107 undergoing transmission, manufacturing production or
108 production of natural resources, or for property directly
109 used in transportation, communication, transmission,
110 manufacturing production or production of natural
111 resources;

112 (K) Maintenance or repair of property directly used
113 in transportation, communication, transmission, manu-
114 facturing production or production of natural resources;

115 (L) Storage, removal or transportation of economic
116 waste resulting from the activities of manufacturing,
117 transportation, communication, transmission or the
118 production of natural resources;

119 (M) Pollution control or environmental quality or
120 protection activity directly relating to the activities of
121 manufacturing, transportation, communication, trans-
122 mission or the production of natural resources and
123 personnel, plant, product or community safety or
124 security activity directly relating to the activities of
125 manufacturing, transportation, communication, trans-
126 mission or the production of natural resources; or

127 (N) Otherwise be used as an integral and essential
128 part of transportation, communication, transmission,
129 manufacturing production or production of natural
130 resources.

130 (3) Uses of property or services which would not
131 constitute direct use or consumption in the activities of
132 manufacturing, transportation, transmission, communi-
133 cation or the production of natural resources includes,
134 but are not limited to:

135 (A) Heating and illumination of office buildings;

136 (B) Janitorial or general cleaning activities;

137 (C) Personal comfort of personnel;

138 (D) Production planning, scheduling of work, or
139 inventory control;

140 (E) Marketing, general management, supervision,
141 finance, training, accounting and administration; or

142 (F) An activity or function incidental or convenient to
143 transportation, communication, transmission, manufac-
144 turing production or production of natural resources,
145 rather than an integral and essential part of such
146 activities.

147 (o) "Contracting."

148 (1) *In general.*—"Contracting" means and includes the
149 furnishing of work, or both materials and work, for
150 another (by a sole contractor, general contractor, prime
151 contractor or subcontractor) in fulfillment of a contract
152 for the construction, alteration, repair, decoration or
153 improvement of a new or existing building or structure,
154 or any part thereof, or for removal or demolition of a
155 building or structure, or any part thereof, or for the
156 alteration, improvement or development of real
157 property.

158 (2) *Form of contract not controlling.*—An activity that
159 falls within the scope of the definition of contracting
160 shall constitute contracting regardless of whether such
161 contract governing the activity is written or verbal and
162 regardless of whether it is in substance or form a lump
163 sum contract, a cost-plus contract, a time and materials
164 contract (whether or not open-ended), or any other kind
165 of construction contract.

166 (3) *Special rules.*—For purposes of this definition:

167 (A) The term “structure” includes, but is not limited
168 to, everything built up or composed of parts joined
169 together in some definite manner and attached or
170 affixed to real property, or which adds utility to real
171 property or any part thereof, or which adds utility to
172 a particular parcel of property and is intended to
173 remain there for an indefinite period of time.

174 (B) The term “alteration” means and is limited to
175 alterations which are capital improvements to a build-
176 ing or structure or to real property.

177 (C) The term “repair” means and is limited to repairs
178 which are capital improvements to a building or
179 structure or to real property.

180 (D) The term “decoration” means and is limited to
181 decorations which are capital improvements to a
182 building or structure or to real property.

183 (E) The term “improvement” means and is limited to
184 improvements which are capital improvements to a
185 building or structure or to real property.

186 (F) The term “capital improvement” means improve-
187 ments that are affixed to or attached to and become a
188 part of a building or structure or the real property or
189 which add utility to real property or any part thereof
190 and that last, or are intended to be relatively permanent.
191 As used herein, “relatively permanent” means lasting at
192 least a year or longer in duration without the necessity
193 for regularly scheduled recurring service to maintain
194 such capital improvement. “Regular recurring service”
195 means regularly scheduled service intervals of less than
196 one year.

197 (G) Contracting does not include the furnishing of
198 work, or both materials and work in the nature of
199 hookup, connection, installation or other services if such
200 service is incidental to the retail sale of tangible
201 personal property from the service provider’s inventory:
202 *Provided*, That such hookup, connection or installation
203 of the foregoing is incidental to the sale of the same and
204 performed by the seller thereof or performed in

205 accordance with arrangements made by the seller
206 thereof. Examples of transactions that are excluded
207 from the definition of contracting pursuant hereto
208 include, but are not limited to, the sale of wall-to-wall
209 carpeting and the installation of wall-to-wall carpeting,
210 the sale, hookup, and connection of mobile homes,
211 window air conditioning units, dishwashers, clothing
212 washing machines or dryers, other household applian-
213 ces, drapery rods, window shades, venetian blinds,
214 canvas awnings, free standing industrial or commercial
215 equipment and other similar items of tangible personal
216 property. Repairs made to the foregoing are within the
217 definition of contracting if such repairs involve perman-
218 ently affixing to or improving real property or some-
219 thing attached thereto which extends the life of the real
220 property or something affixed thereto or allows or is
221 intended to allow such real property or thing perman-
222 ently attached thereto to remain in service for a year
223 or longer.

224 (p) "Manufacturing" means a systematic operation or
225 integrated series of systematic operations engaged in as
226 a business or segment of a business which transforms
227 or converts tangible personal property by physical,
228 chemical or other means into a different form, compo-
229 sition or character from that in which it originally
230 existed.

231 (q) "Transportation" means the act or process of
232 conveying, as a commercial enterprise, passengers or
233 goods from one place or geographical location to another
234 place or geographical location.

235 (r) "Transmission" means the act or process of causing
236 liquid, natural gas or electricity to pass or be conveyed
237 from one place or geographical location to another place
238 or geographical location through a pipeline or other
239 medium for commercial purposes.

240 (s) "Communication" means all telephone, radio, light,
241 light wave, radio telephone, telegraph and other
242 communication or means of communication, whether
243 used for voice communication, computer data transmis-
244 sion or other encoded symbolic information transfers

246 and shall include commercial broadcast radio, commer-
247 cial broadcast television and cable television.

248 (t) "Production of natural resources" means the
249 performance, by either the owner of the natural
250 resources or another, of the act or process of exploring,
251 developing, severing, extracting, reducing to possession
252 and loading for shipment for sale, profit or commercial
253 use of any natural resource products and any reclama-
254 tion, waste disposal or environmental activities asso-
255 ciated therewith.

**§11-15-4b. Liability of purchaser; assessment and collec-
tion.**

1 If any purchaser refuses or otherwise does not pay to
2 the vendor the tax imposed by section three of this
3 article, or in the case of a sale subject to section nine-
4 c of this article, a purchaser refuses to sign and present
5 to the vendor a proper certificate indicating the sale is
6 not subject to this tax, or signs or presents to the vendor
7 a false certificate, or after signing and presenting a
8 proper certificate uses the items purchased in such
9 manner that the sale would be subject to the tax, he
10 shall be personally liable for the amount of tax appli-
11 cable to the transaction or transactions: *Provided*, That
12 nothing herein relieves any purchaser who owes the tax
13 and who has not paid the tax imposed by section three
14 of this article from liability therefor.

15 In such cases the tax commissioner has authority to
16 make an assessment against such purchaser, based upon
17 any information within his possession or that may come
18 into his possession. This assessment and notice thereof
19 shall be made and given in accordance with sections
20 seven and eight, article ten of this chapter.

21 This section may not be construed as relieving the
22 vendor from liability for the tax.

**§11-15-7. Tax on gross proceeds of sales or value of
manufactured, etc., products.**

1 (a) A person exercising the privilege of producing for
2 sale, profit or commercial use, any natural resources,
3 product or manufactured product, and either engaged
4 in the business of selling such product not otherwise

5 exempted herein, or engaged in a business or activity
6 in which such natural resource, product or manufac-
7 tured product is used or consumed by him and such use
8 or consumption is not otherwise exempt under this
9 article, shall make returns of the gross proceeds of such
10 sales or, in the absence of sale, the gross value of the
11 natural resource, product or manufactured product, so
12 used or consumed by him, and pay the tax imposed by
13 this article.

14 (b) The tax commissioner shall promulgate such
15 uniform and equitable rules as he deems necessary for
16 determining the gross value upon which the tax imposed
17 by this article is levied in the absence of a sale, which
18 value shall correspond as nearly as possible to the gross
19 proceeds from the sale of similar products of like quality
20 or character by the same person or by another person.

21 (c) The provisions of this section, as amended by this
22 act, shall apply to natural resources, products or
23 manufactured products, used or consumed by the
24 producer or manufacturer thereof on or after the first
25 day of May, one thousand nine hundred eighty-nine.

§11-15-8a. Contractors.

1 (a) The provisions of this article shall not apply to
2 contracting services. However, purchases by a contrac-
3 tor of tangible personal property or taxable services for
4 use or consumption in the providing of a contracting
5 service shall be taxable beginning the first day of
6 March, one thousand nine hundred eighty-nine, except
7 as otherwise provided in this article.

8 (b) *Transition rules.*—The exemption from payment
9 of tax on purchases of tangible personal property or
10 taxable services directly used or consumed in the
11 activity of contracting, as defined in section two of this
12 article, which expires as of the first day of March, one
13 thousand nine hundred eighty-nine, shall nevertheless
14 remain in effect with respect to:

15 (1) Tangible personal property or taxable services
16 purchased by a contractor on or after said first day of
17 March in fulfillment of a written contract for contract-

18 ing, as defined in section two of this article, that was
19 executed and legally binding on the parties thereto on
20 or before the fifteenth day of February, one thousand
21 nine hundred eighty-nine; or in fulfillment of a written
22 contract entered into after the said fifteenth day of
23 February pursuant to a written bid for contracting that
24 was made on or before the said fifteenth day of
25 February that was binding on the contractor, but only
26 to the extent that the bid is subsequently incorporated
27 into a written contract; or

28 (2) Tangible personal property or taxable services
29 purchased by a contractor on or after the said first day
30 of March pursuant to a written contract executed on or
31 before the fifteenth day of February, one thousand nine
32 hundred eighty-nine, to purchase in specified quantities
33 identified tangible personal property or specified
34 taxable services; or

35 (3) Tangible personal property or taxable services
36 purchased by a contractor for consumption or use in
37 fulfillment of a written contract entered into before the
38 first day of September, one thousand nine hundred
39 eighty-nine, when such contract is for the construction
40 of a new improvement to real property the construction
41 or operation of which was approved by a federal or state
42 regulatory body prior to the first day of February, one
43 thousand nine hundred eighty-nine, or pursuant to a
44 federal grant awarded prior to such first day of
45 February.

46 (c) *Renewals and extensions.*—A renewal of any
47 contract shall constitute a new contract for purposes of
48 this section, and the date of entry into a contract
49 renewal by the parties, the date or dates of tender of
50 consideration and the time of performance of any
51 contractual obligations under a renewed contract shall
52 be treated as the dates for determining application of
53 this section to the renewed contract. Extensions of time
54 granted or agreed upon by the parties to a contract for
55 performance of the contract or for tender of consider-
56 ation under the contract shall not be treated as contract
57 renewals. Contracts to which such extensions apply shall
58 be treated under these transition rules as if the original

59 contractual provisions for performance and tender of
60 consideration remain in effect.

61 (d) *Definitions*.—For purposes of this section:

62 (1) The term “contract” or “contracts” means written
63 agreements reciting or setting forth a fixed price
64 consideration or a consideration based upon cost plus a
65 stated percentage or a stated monetary increment. This
66 term shall not mean or include ongoing sales contracts,
67 contracts whereby any element of the consideration or
68 the property or services sold or to be rendered in
69 performance of the contract are undefined, or deter-
70 mined, as to either nature or quantity, subsequent to the
71 making of the contract, or any open-ended contract.

72 (2) The term “contract renewal” or “renewal” means
73 a covenant or agreement entered into or assumed by
74 parties which have a current contractual relation or
75 which have had a past contractual relation, whereby the
76 parties agree to incur obligations beyond those which
77 they were, or would have been, required, at the
78 minimum, to carry out under their current or past
79 contractual relation.

**§11-15-8b. Nonresident contractor—Registration, bond,
etc.**

1 (a) Every nonresident contractor shall register with
2 the tax commissioner prior to engaging in the perfor-
3 mance of a contract in this state.

4 (b) (1) At the time of registration, the contractor shall
5 deposit with the tax commissioner six percent of the
6 amount the contractor is to receive for the performance
7 of the contract which shall be held within a Contractors
8 Use Tax Fund pending the completion of the contract,
9 the determination of the taxes due this state under this
10 article and article fifteen-a of this chapter because of
11 such contract and the payment of the tax.

12 (2) In lieu of the deposit, the contractor may provide
13 a corporate surety bond to be approved by the tax
14 commissioner as to form, sufficiency, value, amount,
15 stability, and other features necessary to provide a
16 guarantee of payment of the compensating tax due this
17 state.

18 (c) In addition, within thirty days after registration,
19 under this section, the contractor shall file a statement
20 with the tax commissioner itemizing the machinery,
21 materials, supplies, and equipment that he has or will
22 have on hand at the time he begins the fulfillment of
23 the contract, including where such tangible personal
24 property has been brought, shipped, or transported from
25 outside this state upon which neither the tax imposed
26 by this article nor article fifteen-a of this chapter has
27 been paid, and shall pay the tax due thereon at the time
28 of filing and thereafter shall report and pay the taxes
29 as required by this article and article fifteen-a of this
30 chapter.

§11-15-9. Exemptions.

1 The following sales and services are exempt:

2 (a) Sales of gas, steam and water delivered to consu-
3 mers through mains or pipes, and sales of electricity;

4 (b) Sales of textbooks required to be used in any of
5 the schools of this state or in any institution in this state
6 which qualifies as a nonprofit or educational institution
7 subject to the West Virginia department of education or
8 West Virginia board of regents;

9 (c) Sales of property or services to the state, its
10 institutions or subdivisions, and to the United States,
11 including agencies of federal, state or local governments
12 for distribution in public welfare or relief work;

13 (d) Sales of vehicles which are titled by the depart-
14 ment of motor vehicles and which are subject to the tax
15 imposed by section four, article three, chapter seven-
16 teen-a of this code, or like tax;

17 (e) Sales of property or services to churches and bona
18 fide charitable organizations who make no charge
19 whatsoever for the services they render: *Provided*, That
20 the exemption herein granted shall apply only to
21 services, equipment, supplies, food for meals and
22 materials directly used or consumed by these organiza-
23 tions, and shall not apply to purchases of gasoline or
24 special fuel;

25 (f) Sales of tangible personal property or services to
26 a corporation or organization which has a current
27 registration certificate issued under article twelve of
28 this chapter is exempt from federal income taxes under
29 section 501(c)(3) or (c)(4) of the Internal Revenue Code
30 of 1986, as amended, and is:

31 (1) A church or a convention or association of
32 churches as defined in section 170 of the Internal
33 Revenue Code of 1986, as amended;

34 (2) An elementary or secondary school which main-
35 tains a regular faculty and curriculum and has a
36 regularly enrolled body of pupils or students in attend-
37 ance at the place in this state where its educational
38 activities are regularly carried on;

39 (3) A corporation or organization which annually
40 receives more than one half of its support from any
41 combination of gifts, grants, direct or indirect charita-
42 ble contributions, or membership fees; or

43 (4) An organization which has no paid employees and
44 its gross income from fund raisers, less reasonable and
45 necessary expenses incurred to raise such gross income
46 (or the tangible personal property or services purchased
47 with such net income), is donated to an organization
48 which is exempt from income taxes under section
49 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986,
50 as amended;

51 (5) For purposes of this subsection:

52 (A) The term "support" includes, but is not limited to:

53 (i) Gifts, grants, contributions or membership fees;

54 (ii) Gross receipts from fund raisers which include
55 receipts from admissions, sales of merchandise, perfor-
56 mance of services or furnishing of facilities in any
57 activity which is not an unrelated trade or business
58 (within the meaning of section 513 of the Internal
59 Revenue Code of 1986, as amended);

60 (iii) Net income from unrelated business activities,

61 whether or not such activities are carried on regularly
62 as a trade or business;

63 (iv) Gross investment income as defined in section
64 509(e) of the Internal Revenue Code of 1986, as
65 amended;

66 (v) Tax revenues levied for the benefit of a corpora-
67 tion or organization either paid to or expended on behalf
68 of such organization; and

69 (vi) The value of services or facilities (exclusive of
70 services or facilities generally furnished to the public
71 without charge) furnished by a governmental unit
72 referred to in section 170(c)(1) of the Internal Revenue
73 Code of 1986, as amended, to an organization without
74 charge. This term does not include any gain from the
75 sale or other disposition of property which would be
76 considered as gain from the sale or exchange of a capital
77 asset, or the value of an exemption from any federal,
78 state or local tax or any similar benefit;

79 (B) The term "charitable contribution" means a
80 contribution or gift to or for the use of a corporation or
81 organization, described in section 170(c)(2) of the
82 Internal Revenue Code of 1986, as amended;

83 (C) The term "membership fee" does not include any
84 amounts paid for tangible personal property or specific
85 services rendered to members by the corporation or
86 organization;

87 (6) The exemption allowed by this subsection (f) does
88 not apply to sales of gasoline or special fuel or to sales
89 of tangible personal property or services to be used or
90 consumed in the generation of unrelated business
91 income as defined in section 513 of the Internal Revenue
92 Code of 1986, as amended. The provisions of this
93 subsection as amended by this act shall apply to sales
94 made after the thirtieth day of June, one thousand nine
95 hundred eighty-nine: *Provided*, That the exemption
96 herein granted shall apply only to services, equipment,
97 supplies and materials used or consumed in the activ-
98 ities for which such organizations qualify as tax exempt
99 organizations under the Internal Revenue Code by these

100 organizations and shall not apply to purchases of
101 gasoline or special fuel;

102 (g) Sales of property or services to persons engaged
103 in this state in the business of manufacturing, transpor-
104 tation, transmission, communication or in the produc-
105 tion of natural resources: *Provided*, That the exemption
106 herein granted shall apply only to services, machinery,
107 supplies and materials directly used or consumed in the
108 businesses or organizations named above, and shall not
109 apply to purchases of gasoline or special fuel: *Provided*,
110 *however*, That on and after the first day of July, one
111 thousand nine hundred eighty-seven, the exemption
112 provided in this subsection shall apply only to services,
113 machinery, supplies and materials directly used or
114 consumed in the activities of manufacturing, transpor-
115 tation, transmission, communication or the production of
116 natural resources in the businesses or organizations
117 named above and shall not apply to purchases of
118 gasoline or special fuel;

119 (h) An isolated transaction in which any taxable
120 service or any tangible personal property is sold,
121 transferred, offered for sale or delivered by the owner
122 thereof or by his representative for the owner's account,
123 such sale, transfer, offer for sale or delivery not being
124 made in the ordinary course of repeated and successive
125 transactions of like character by such owner or on his
126 account by such representative: *Provided*, That nothing
127 contained herein may be construed to prevent an owner
128 who sells, transfers or offers for sale tangible personal
129 property in an isolated transaction through an auctio-
130 neer from availing himself or herself of the exemption
131 provided herein, regardless where such isolated sale
132 takes place. The tax commissioner may adopt such
133 legislative rule pursuant to chapter twenty-nine-a of this
134 code he deems necessary for the efficient administration
135 of this exemption;

136 (i) Sales of tangible personal property or of any
137 taxable services rendered for use or consumption in
138 connection with the commercial production of an
139 agricultural product the ultimate sale of which will be
140 subject to the tax imposed by this article or which would

141 have been subject to tax under this article: *Provided*,
142 That sales of tangible personal property and services to
143 be used or consumed in the construction of or permanent
144 improvement to real property and sales of gasoline and
145 special fuel shall not be exempt;

146 (j) Sales of tangible personal property to a person for
147 the purpose of resale in the form of tangible personal
148 property: *Provided*, That sales of gasoline and special
149 fuel by distributors and importers shall be taxable
150 except when the sale is to another distributor for resale:
151 *Provided, however*, That sales of building materials or
152 building supplies or other property to any person
153 engaging in the activity of contracting, as defined in this
154 article, which is to be installed in, affixed to or
155 incorporated by such person or his agent into any real
156 property, building or structure shall not be exempt
157 under this subsection, except that sales of tangible
158 personal property to a person engaging in the activity
159 of contracting pursuant to a written contract with the
160 United States, this state, or with a political subdivision
161 thereof, or with a public corporation created by the
162 Legislature or by another government entity pursuant
163 to an act of the Legislature, for a building or structure
164 (or improvement thereto) or other improvement to real
165 property that is or will be owned and used by the
166 governmental entity for a governmental or proprietary
167 purpose, who incorporates such property in such
168 building, structure or improvement shall, with respect
169 to such tangible personal property, nevertheless be
170 deemed to be the vendor of such property to the
171 governmental entity and any person seeking to qualify
172 for and assert this exception must do so pursuant to such
173 legislative rules and regulations as the tax commissioner
174 may promulgate and upon such forms as the tax
175 commissioner may prescribe. A subcontractor who,
176 pursuant to a written subcontract with a prime contrac-
177 tor who qualifies for this exception, provides equipment,
178 or materials, and labor to such a prime contractor shall
179 be treated in the same manner as the prime contractor
180 is treated with respect to the prime contract under this
181 exception and the legislative rules and regulations
182 promulgated by the tax commissioner;

183 (k) Sales of property or services to nationally char-
184 tered fraternal or social organizations for the sole
185 purpose of free distribution in public welfare or relief
186 work: *Provided*, That sales of gasoline and special fuel
187 shall be taxable;

188 (l) Sales and services, fire fighting or station house
189 equipment, including construction and automotive,
190 made to any volunteer fire department organized and
191 incorporated under the laws of the state of West
192 Virginia: *Provided*, That sales of gasoline and special
193 fuel shall be taxable;

194 (m) Sales of newspapers when delivered to consumers
195 by route carriers;

196 (n) Sales of drugs dispensed upon prescription and
197 sales of insulin to consumers for medical purposes;

198 (o) Sales of radio and television broadcasting time,
199 preprinted advertising circulars and newspaper and
200 outdoor advertising space for the advertisement of goods
201 or services;

202 (p) Sales and services performed by day-care centers;

203 (q) Casual and occasional sales of property or services
204 not conducted in a repeated manner or in the ordinary
205 course of repetitive and successive transactions of like
206 character by a corporation or organization which is
207 exempt from tax under subsection (f) of this section on
208 its purchases of tangible personal property or services:

209 (1) For purposes of this subsection, the term "casual
210 and occasional sales not conducted in repeated manner
211 or in the ordinary course of repetitive and successive
212 transactions of like character" means sales of tangible
213 personal property or services at fund raisers sponsored
214 by a corporation or organization which is exempt, under
215 subsection (f) of this section, from payment of the tax
216 imposed by this article on its purchases, when such fund
217 raisers are of limited duration and are held no more
218 than six times during any twelve-month period and
219 limited duration means no more than eighty-four
220 consecutive hours;

221 (2) The provisions of this subsection (q), as amended
222 by this act, shall apply to sales made after the thirtieth
223 day of June, one thousand nine hundred eighty-nine;

224 (r) Sales of property or services to a school which has
225 approval from the West Virginia board of regents to
226 award degrees, which has its principal campus in this
227 state, and which is exempt from federal and state
228 income taxes under section 501(c)(3) of the Internal
229 Revenue Code of 1986, as amended: *Provided*, That sales
230 of gasoline and special fuel shall be taxable;

231 (s) Sales of mobile homes to be utilized by purchasers
232 as their principal year-round residence and dwelling:
233 *Provided*, That these mobile homes shall be subject to
234 tax at the three percent rate;

235 (t) Sales of lottery tickets and materials by licensed
236 lottery sales agents and lottery retailers authorized by
237 the state lottery commission, under the provisions of
238 article twenty-two, chapter twenty-nine of this code;

239 (u) Leases of motor vehicles titled pursuant to the
240 provisions of article three, chapter seventeen-a of this
241 code to lessees for a period of thirty or more consecutive
242 days. This exemption shall apply to leases executed on
243 or after the first day of July, one thousand nine hundred
244 eighty-seven, and to payments under long-term leases
245 executed before such date, for months thereof beginning
246 on or after such date;

247 (v) Notwithstanding the provisions of subsection
248 (g) of this section or any provisions of this article to the
249 contrary, sales of property and services to persons
250 subject to tax under article thirteen, thirteen-a or
251 thirteen-b of this chapter: *Provided*, That the exemption
252 herein granted shall apply both to property or services
253 directly or not directly used or consumed in the conduct
254 of privileges which are subject to tax under such articles
255 but shall not apply to purchases of gasoline or special
256 fuel;

257 (w) Sales of propane to consumers for poultry house
258 heating purposes, with any seller to such consumer who
259 may have prior paid such tax in his price, to not pass

260 on the same to the consumer, but to make application
261 and receive refund of such tax from the tax commis-
262 sioner, pursuant to rules and regulations which shall be
263 promulgated by the tax commissioner; and notwith-
264 standing the provisions of section eighteen of this article
265 or any other provisions of such article to the contrary;

266 (x) Any sales of tangible personal property or services
267 purchased after the thirtieth day of September, one
268 thousand nine hundred eighty-seven, and lawfully paid
269 for with food stamps pursuant to the federal food stamp
270 program codified in 7 United States Code, §2011, et seq.,
271 as amended, or with drafts issued through the West
272 Virginia special supplemental food program for women,
273 infants and children codified in 42 United States Code,
274 §1786;

275 (y) Sales of tickets for activities sponsored by elemen-
276 tary and secondary schools located within this state;

277 (z) Sales of electronic data processing services and
278 related software: *Provided*, That for the purposes of this
279 subsection (z) "electronic data processing services"
280 means (1) the processing of another's data, including all
281 processes incident to processing of data such as key-
282 punching, keystroke verification, rearranging or sorting
283 of previously documented data for the purpose of data
284 entry or automatic processing, and changing the
285 medium on which data is sorted, whether these pro-
286 cesses are done by the same person or several persons;
287 and (2) providing access to computer equipment for the
288 purpose of processing data or examining or acquiring
289 data stored in or accessible to such computer equipment;

290 (aa) Tuition charged for attending educational
291 summer camps;

292 (bb) Sales of building materials or building supplies
293 or other property to an organization qualified under
294 section 501 (c)(3) or (c)(4) of the Internal Revenue Code
295 of 1986, as amended, which are to be installed in, affixed
296 to or incorporated by such organization or its agent into
297 real property, or into a building or structure which is
298 or will be used as permanent low-income housing,
299 transitional housing, emergency homeless shelter,

300 domestic violence shelter or emergency children and
301 youth shelter if such shelter is owned, managed,
302 developed or operated by an organization qualified
303 under section 501(c)(3) or (c)(4) of the Internal Revenue
304 Code of 1986, as amended;

305 (cc) Dispensing of services performed by one corpora-
306 tion for another corporation when both corporations are
307 members of the same controlled group. Control means
308 ownership, directly or indirectly, of stock possessing
309 fifty percent or more of the total combined voting power
310 of all classes of the stock of a corporation entitled to vote
311 or ownership, directly or indirectly, of stock possessing
312 fifty percent or more of the value of the corporation;

313 (dd) Food for the following shall be exempt:

314 (1) Food purchased or sold by public or private
315 schools, school sponsored student organizations, or
316 school sponsored parent-teacher associations to students
317 enrolled in such school or to employees of such school
318 during normal school hours; but not those sales of food
319 made to the general public;

320 (2) Food purchased or sold by a public or private
321 college or university or by a student organization
322 officially recognized by such college or university to
323 students enrolled at such college or university when
324 such sales are made on a contract basis so that a fixed
325 price is paid for consumption of food products for a
326 specific period of time without respect to the amount of
327 food product actually consumed by the particular
328 individual contracting for the sale and no money is paid
329 at the time the food product is served or consumed;

330 (3) Food purchased or sold by a nonprofit organiza-
331 tion or a governmental agency under a program funded
332 by a state or the United States to low-income elderly
333 persons at or below cost;

334 (4) Food sold in an occasional sale by a charitable or
335 nonprofit organization including volunteer fire depart-
336 ments and rescue squads, if the purpose of the sale is
337 to obtain revenue for the functions and activities of the
338 organization and the revenue so obtained is actually
339 expended for that purpose;

340 (5) Food sold by any religious organization at a social
341 or other gathering conducted by it or under its auspices,
342 if the purpose in selling the food is to obtain revenue
343 for the functions and activities of the organization and
344 the revenue obtained from selling the food is actually
345 used in carrying on such functions and activities:
346 *Provided*, That purchases made by such organizations
347 shall not be exempt as a purchase for resale;

348 (ee) Sales of food by little leagues, midget football
349 leagues, youth football or soccer leagues and similar
350 types of organizations including scouting groups and
351 church youth groups if the purpose in selling the food
352 is to obtain revenue for the functions and activities of
353 the organization and the revenues obtained from selling
354 the food is actually used in supporting or carrying on
355 functions and activities of the groups: *Provided*, That
356 such purchases made by such organizations shall not be
357 exempt as a purchase for resale;

358 (ff) Charges for room and meals by fraternities and
359 sororities to their members: *Provided*, That such
360 purchases made by a fraternity or sorority shall not be
361 exempt as a purchase for resale;

362 (gg) Sales of or charges for the transportation of
363 passengers in interstate commerce;

364 (hh) Sales of tangible personal property or services to
365 any person which this state is prohibited from taxing
366 under the laws of the United States or under the
367 constitution of this state; and

368 (ii) Sales of tangible personal property or services to
369 any person who claims exemption from the tax imposed
370 by this article or article fifteen-a of this chapter
371 pursuant to the provisions of any other chapter of this
372 code.

**§11-15-9b. Method for claiming exemptions, refunds of
tax, credit against other taxes.**

1 (a) Any person having a right or claim to any
2 exemption set forth in section nine of this article except

3 those exemptions set forth in subsections (a), (b), (c), (d),
4 (f), (h), (i), (j), (m), (n), (o), (p), (q), (r), (s), (t), (u), (w),
5 (x), (y), (z), (aa), (cc), (dd), (ee), (ff), (gg), (hh), and (ii) of
6 said section nine, or the exemption of sales of property
7 or services to churches under subsection (e) of said
8 section nine, shall pay to the vendor the tax imposed by
9 this article and may exercise or assert such exemption
10 only in accordance with subsection (b) or subsection
11 (c) of this section.

12 (b) Any person who has paid the tax imposed by this
13 article and who may lawfully claim exemption from the
14 tax under a subsection of section nine of this article not
15 enumerated in subsection (a) of this section may
16 exercise or assert such claim by filing a claim for refund
17 of consumers sales and service tax overpayments on
18 such form and in such manner as the tax commissioner
19 may require and in accordance with the requirements
20 of this section. The tax commissioner shall cause a
21 refund to be made within thirty days of receipt of a
22 lawful and accurate claim.

23 (c) In lieu of filing a claim for refund of consumers
24 sales and service tax overpayments, the taxpayer may,
25 at his option, file a claim for credit on such form and
26 in such manner as the tax commissioner may require
27 and credit the amount of consumers sales and service
28 tax overpayments against certain payments of tax due
29 in accordance with the requirements of this section as
30 follows:

31 (1) If the taxpayer is required to remit the tax
32 imposed under this article or article fifteen-a of this
33 chapter pursuant to section five or subsection (b) of
34 section nine-d of this article or subsection (b) of section
35 three-d of said article fifteen-a, the taxpayer may credit
36 the amount of consumers sales and service tax overpay-
37 ments against the remittance of the tax imposed under
38 said articles otherwise due; or

39 (2) If the taxpayer is subject to the tax imposed under
40 article thirteen of this chapter, the taxpayer may credit
41 the amount of consumers sales and service tax overpay-
42 ments remaining after application of part (1) of this

43 subsection against the taxpayer's quarterly or monthly
44 remittance of the tax imposed under said article
45 thirteen otherwise due; or

46 (3) If the taxpayer is subject to the tax imposed under
47 article twelve-a of this chapter, the taxpayer may credit
48 the amount of consumers sales and service tax overpay-
49 ments remaining after application of parts (1) and (2) of
50 this subsection against the taxpayer's annual or semian-
51 nual remittance of the tax imposed under said article
52 twelve-a otherwise due; or

53 (4) If the taxpayer is subject to the tax imposed under
54 article thirteen-a of this chapter, the taxpayer may
55 credit the amount of consumers sales and service tax
56 overpayments remaining after application of parts (1),
57 (2) and (3) of this subsection against the taxpayer's
58 quarterly or monthly remittance of the tax imposed
59 under said article thirteen-a otherwise due; or

60 (5) If the taxpayer is subject to the tax imposed under
61 article thirteen-b of this chapter, the taxpayer may
62 credit the amount of consumers sales and service tax
63 overpayments remaining after application of parts (1),
64 (2), (3) and (4) of this subsection against the taxpayer's
65 quarterly or monthly remittance of the tax imposed
66 under said article thirteen-b otherwise due; or

67 (6) If the taxpayer is subject to the tax imposed under
68 article twenty-four of this chapter, the taxpayer may
69 credit the amount of consumers sales and service tax
70 overpayments remaining after application of parts (1),
71 (2), (3), (4) and (5) of this subsection against the
72 taxpayer's installment of estimated tax imposed under
73 said article twenty-four and otherwise due under section
74 seventeen, article twenty-four of this chapter; or

75 (7) If the taxpayer is subject to the tax imposed under
76 article twenty-one of this chapter, the taxpayer may
77 credit the amount of consumers sales and service tax
78 overpayments remaining after application of parts (1),
79 (2), (3), (4), (5) and (6) of this subsection against the
80 taxpayer's installment of estimated tax imposed under
81 said article twenty-one and otherwise due under section
82 fifty-six, article twenty-one of this chapter; or

83 (8) If the taxpayer is subject to the tax imposed under
84 article twenty-three of this chapter, the taxpayer may
85 credit the amount of consumers sales and service tax
86 overpayments remaining after application of parts (1),
87 (2), (3), (4), (5), (6) and (7) of this subsection against the
88 taxpayer's annual remittance of the tax imposed under
89 said article twenty-three and otherwise due; or

90 (9) If the taxpayer is required to deduct and withhold
91 tax under article twenty-one of this chapter, the
92 taxpayer may credit the amount of consumers sales and
93 service tax overpayments remaining after application of
94 parts (1), (2), (3), (4), (5), (6), (7) and (8) of this
95 subsection against the taxpayer's monthly remittance of
96 the tax withheld under said article twenty-one and
97 otherwise due.

98 (d) Any person asserting or exercising a claim of
99 exemption from the tax imposed by this article under
100 subsections (b) or (c) of this section shall file with the
101 tax commissioner an application for exemption in such
102 form as the tax commissioner shall prescribe and such
103 affidavits, invoices, sales slips, records or documents as
104 the tax commissioner may require to prove or verify the
105 taxpayer's right and entitlement to such exemption. The
106 tax commissioner may inspect or examine the records,
107 books, papers, documents, affidavits, sales slips and
108 invoices of a taxpayer or any other person to verify the
109 truth and accuracy of any report or return or to
110 ascertain whether the tax imposed by this article has
111 been paid.

112 In addition to the powers of the tax commissioner set
113 forth in article ten of this chapter, as a further means
114 of obtaining the records, books, papers, documents,
115 affidavits, sales slips or invoices of a taxpayer or any
116 other person and ascertaining the amount of taxes paid
117 or due under this article or any report, form, document
118 or affidavit required under this article, the commis-
119 sioner shall have the power to examine witnesses under
120 oath; and if any witness shall fail or refuse at the request
121 of the commissioner to grant access to the books,
122 records, papers, documents, affidavits, sales slips or
123 invoices requested by the commissioner, the commis-

124 sioner shall certify the facts and the names to the circuit
125 court of the county having jurisdiction over the party
126 and such court shall thereupon issue a subpoena duces
127 tecum to such party to appear before the commissioner,
128 at a place designated within the jurisdiction of such
129 court, on a day fixed.

130 (e) All claims for refund of consumers sales and
131 service tax overpayments under subsection (b) of this
132 section shall be filed within the time limitation for filing
133 claims for refund set forth in section fourteen, article
134 ten of this chapter. Any claim for such refund or claim
135 of entitlement to such refund made or asserted after the
136 said time limitation shall be null and void, and if the
137 consumers sales and service tax overpayment has not
138 otherwise been credited against tax remittances in
139 accordance with this section, the said claims shall be
140 forfeited.

141 (f) Any credit of consumers sales and service tax
142 overpayments against taxes under subsection (c) of this
143 section shall be taken within one year after the payment
144 of the said consumers sales and service tax by the
145 consumer to the vendor. Any such credit or claim of
146 entitlement to such credit made or asserted more than
147 one year after the payment of such tax by the consumer
148 to the vendor shall be null and void, and such consumers
149 sales and service tax overpayments shall be forfeited
150 unless refunded under subsection (b) of this section.

151 (g) Any assignment of the right or entitlement to a
152 refund or credit arising under this section shall be
153 subject to strict proof, and any assignee claiming a right
154 or entitlement to an assigned refund or credit shall
155 submit an affidavit in such form as the tax commis-
156 sioner shall prescribe signed by the assignor acknowl-
157 edging the assignment. The assignee shall attest to the
158 assignment and the terms thereof on his signed appli-
159 cation filed under subsection (d) of this section for
160 refund or credit, and will be subject to the penalties
161 provided under West Virginia law for perjury for any
162 falsehood set forth therein and will be subject to the
163 penalties set forth in article nine of this chapter for any
164 violation thereof. Except as provided in this subsection

165 (g), no payment of a refund arising under this section
166 shall be made to any person other than the taxpayer
167 making the original overpayment of consumers sales
168 and service tax.

169 (h) No refund shall be due and no credit shall be
170 allowed under this section unless the taxpayer or
171 assignee shall have filed a claim for refund or a claim
172 for credit, as appropriate, with the tax commissioner in
173 accordance with this section.

174 (i) Any claim for a refund of consumers sales and
175 service tax overpayments or for a tax credit for
176 consumers sales and service tax overpayments which is
177 not timely filed or not filed in proper form or in
178 accordance with the requirements of this section shall
179 not be construed to constitute a moral obligation of the
180 state of West Virginia for payment. No overpayment of
181 consumers sales and service tax made under this section
182 shall be subject to subsection (d), section seventeen,
183 article ten of this chapter or subdivision (1), subsection
184 (e), section seventeen, article ten of this chapter.

185 (j) The provisions of this section become effective after
186 the thirtieth day of June, one thousand nine hundred
187 eighty-seven.

**§11-15-9c. Delivery of a certificate of exemption in lieu
of tax.**

1 Persons having a right or claim to any exemption set
2 forth in subsections (a), (b), (c), (d), (f), (h), (i), (j), (m),
3 (n), (o), (p), (q), (r), (s), (t), (u), (w), (x), (y), (z), (aa), (cc),
4 (dd), (ee), (ff), (gg), (hh), and (ii) of section nine of this
5 article shall, in lieu of paying the tax imposed by this
6 article, execute a certificate of exemption in such form
7 as the tax commissioner may require, and such executed
8 exemption certificate shall be delivered to the vendor in
9 such manner as the tax commissioner may require:
10 *Provided*, That the tax commissioner may identify
11 exemptions for which exemption certificates are not
12 required and as soon as practical may specify by
13 regulation exemptions for which exemption certificates
14 are not required.

§11-15-9d. Direct pay permits.

1 (a) Notwithstanding any other provision of this
2 article, the tax commissioner may, pursuant to rules and
3 regulations promulgated by him in accordance with
4 article three, chapter twenty-nine-a of this code,
5 authorize a person (as defined in section two) that is a
6 user, consumer, distributor or lessee to which sales or
7 leases of tangible personal property are made or services
8 provided, to pay any tax levied by this article or article
9 fifteen-a of this chapter directly to the tax commissioner
10 and waive the collection of the tax by that person's
11 vendor. No such authority shall be granted or exercised
12 except upon application to the tax commissioner and
13 after issuance by the tax commissioner of a direct pay
14 permit. Upon issuance of such direct pay permit,
15 payment of the tax imposed or assertion of the exemp-
16 tions allowed by this article or article fifteen-a of this
17 chapter on sales and leases of tangible personal property
18 and sales of taxable services from the vendors thereof
19 shall be made directly to the tax commissioner by the
20 permit holder.

21 (b) On or before the fifteenth day of each month, every
22 permit holder shall make and file with the tax commis-
23 sioner a consumer sales and use tax direct pay permit
24 return for the preceding month in the form prescribed
25 by the tax commissioner showing the total value of the
26 tangible personal property so used, the amount of
27 taxable services purchased, the amount of consumers
28 sales and use taxes due from the permit holder, which
29 amount shall be paid to the tax commissioner with such
30 return, and such other information as the tax commis-
31 sioner deems necessary: *Provided*, That if the amount of
32 consumers sales and use taxes due averages less than
33 one hundred dollars per month, the tax commissioner
34 may permit the filing of quarterly returns in lieu of
35 monthly returns and the amount of tax shown thereon
36 to be due shall be remitted on or before the fifteenth day
37 following the close of the calendar quarter; and if the
38 amount due averages less than fifty dollars per calendar
39 quarter, the tax commissioner may permit the filing of
40 an annual direct pay permit return and the amount of

41 tax shown thereon to be due shall be remitted on or
42 before the last day of January each year. The tax
43 commissioner, upon written request by the permit
44 holder, may grant a reasonable extension of time, upon
45 such terms as the tax commissioner may require, for the
46 making and filing of direct pay permit returns and
47 paying the tax due. Interest on such tax shall be
48 chargeable on every such extended payment at the rate
49 specified in section seventeen, article ten of this chapter.

50 (c) A permit issued pursuant to this section shall
51 continue to be valid until expiration of the taxpayers
52 registration year under article twelve of this chapter.
53 This permit shall automatically be renewed when the
54 taxpayers business registration certificate is issued for
55 the next succeeding fiscal year, unless the permit is
56 surrendered by the holder or canceled for cause by the
57 tax commissioner.

58 (d) Persons who hold a direct payment permit which
59 has not been canceled shall not be required to pay the
60 tax to the vendor as otherwise provided in this article
61 or article fifteen-a of this chapter. Such persons shall
62 notify each vendor from whom tangible personal
63 property is purchased or leased or from whom services
64 are purchased of their direct payment permit number
65 and that the tax is being paid directly to the tax
66 commissioner. Upon receipt of such notice, such vendor
67 shall be absolved from all duties and liabilities imposed
68 by this chapter for the collection and remittance of the
69 tax with respect to sales of tangible personal property
70 and sales of services to such permit holder. Vendors who
71 make sales upon which the tax is not collected by reason
72 of the provisions of this section shall maintain records
73 in such manner that the amount involved and identity
74 of each such purchaser may be ascertained.

75 (e) Upon the expiration, cancellation or surrender of
76 a direct payment permit, the provisions of this chapter,
77 without regard to this section, shall thereafter apply to
78 the person who previously held such permit, and such
79 person shall promptly so notify in writing vendors from
80 whom tangible personal property or services are
81 purchased or leased of such cancellation or surrender.

82 Upon receipt of such notice, the vendor shall be subject
83 to the provisions of this chapter, without regard to this
84 section, with respect to all sales, distributions, leases or
85 storage of tangible personal property, thereafter made
86 to or for such person.

§11-15-18. Tax on gasoline and special fuel.

1 (a) *General.*—All sales of gasoline or special fuel by
2 distributors or importers, except when to another
3 distributor for resale in this state, when delivery is
4 made in this state, shall be subject to the tax imposed
5 by this article, notwithstanding any provision of this
6 article to the contrary. Sales of gasoline or special fuel
7 by a person who paid the tax imposed by this article on
8 his purchases of fuel, shall not thereafter be again taxed
9 under the provisions of this article. This section shall be
10 construed so that all gallons of gasoline or special fuel
11 sold and delivered, or delivered, in this state are taxed
12 one time.

13 (b) *Measure of tax.*—The measure of tax on sales of
14 gasoline or special fuel by distributors or importers
15 shall be the average wholesale price as defined and
16 determined in subsection (c), section thirteen, article
17 fifteen-a of this chapter. For purposes of maintaining
18 revenue for highways, and recognizing that the tax
19 imposed by this article is generally imposed on gross
20 proceeds from sales to ultimate consumers, whereas the
21 tax on gasoline and special fuel herein is imposed on the
22 average wholesale price of such gasoline and special
23 fuel; in no case, for the purposes of taxation under this
24 article, shall such average wholesale price be deemed to
25 be less than ninety-seven cents per gallon of gasoline or
26 special fuel for all gallons of gasoline and special fuel
27 sold during the reporting period, notwithstanding any
28 provision of this article to the contrary.

29 (c) *Definitions.*—For purposes of this section:

30 (1) "Aircraft" shall include any airplane or helicopter
31 that lands in this state on a regular or routine basis, and
32 transports passengers or freight.

33 (2) "Aircraft fuel" shall mean gasoline and special
34 fuel suitable for use in any aircraft engine.

35 (3) "Distributor" shall mean and include every person:

36 (A) Who produces, manufactures, processes or other-
37 wise alters gasoline or special fuel in this state for use
38 or for sale; or

39 (B) Who engages in this state in the sale of gasoline
40 or special fuel for the purpose of resale or for distribu-
41 tion; or

42 (C) Who receives gasoline or special fuel into the
43 cargo tank of a tank wagon in this state for use or sale
44 by such person.

45 (4) "Gasoline" shall mean and include any product
46 commonly or commercially known as gasoline, regard-
47 less of classification, suitable for use as fuel in an
48 internal combustion engine, except special fuel as
49 hereinafter defined, including any product obtained by
50 blending together any one or more products, with or
51 without other products, if the resultant product is
52 capable of the same use.

53 (5) "Importer" shall mean and include every person,
54 resident or nonresident, other than a distributor, who
55 receives gasoline or special fuel outside this state for use,
56 sale or consumption within this state, but shall not
57 include the fuel in the supply tank of a motor vehicle
58 that is not a motor carrier.

59 (6) "Motor carrier" shall mean and include: (A) Any
60 passenger vehicle which has seats for more than nine
61 passengers in addition to the driver, any road tractor,
62 tractor truck or any truck having more than two axles,
63 which is operated or caused to be operated, by any
64 person on any highway in this state using gasoline or
65 special fuel; and (B) any aircraft, barge or other
66 watercraft, or locomotive transporting passengers or
67 freight in or through this state.

68 (7) "Motor vehicle" shall mean and include automo-
69 biles, motor carriers, motor trucks, motorcycles and all
70 other vehicles or equipment, engines or machines which
71 are operated or propelled by combustion of gasoline or
72 special fuel.

73 (8) "Retail dealer of gasoline or special fuel" shall
74 mean and include any person not a distributor, who sells
75 gasoline or special fuel from a fixed location in this state
76 to users.

77 (9) "Special fuel" shall mean and include any gas or
78 liquid, other than gasoline, used or suitable for use as
79 fuel in an internal combustion engine. The term "special
80 fuel" shall include products commonly known as natural
81 or casinghead gasoline and shall include gasoline and
82 special fuel for heating any private residential dwelling,
83 building or other premises; but shall not include any
84 petroleum product or chemical compound such as
85 alcohol, industrial solvent, heavy furnace oil, lubricant,
86 etc., not commonly used nor practicably suited for use
87 as fuel in an internal combustion engine.

88 (10) "Supply tank" shall mean any receptacle on a
89 motor vehicle from which gasoline or special fuel is
90 supplied for the propulsion of the vehicle or equipment
91 located thereon, exclusive of a cargo tank. A supply tank
92 includes a separate compartment of a cargo tank used
93 as a supply tank, and any auxiliary tank or receptacle
94 of any kind or cargo tank, from which gasoline or
95 special fuel is supplied for the propulsion of the vehicle,
96 whether or not such tank or receptacle is directly
97 connected to the fuel supply line of the vehicle.

98 (11) "Tank wagon" shall mean and include any motor
99 vehicle or vessel with a cargo tank or cargo tanks
100 ordinarily used for making deliveries of gasoline or
101 special fuel, or both, for sale or use.

102 (12) "Taxpayer" shall mean any person liable for the
103 tax imposed by this article.

104 (13) "User" shall mean any person who purchases
105 gasoline or special fuel for use or consumption.

106 (d) *Tax due*.—The tax on sales of gasoline and special
107 fuel shall be paid by each taxpayer on or before the
108 twenty-fifth day of each month, by check, bank draft,
109 certified check or money order, payable to the tax
110 commissioner for the amount of tax due for the

111 preceding month, notwithstanding any provision of this
112 article to the contrary.

113 (e) *Monthly return.*—On or before the twenty-fifth day
114 of each month, the taxpayer shall make and file a return
115 for the preceding month showing such information as
116 the tax commissioner may require, notwithstanding any
117 provision of this article to the contrary.

118 (f) *Compliance.*—To facilitate ease of administration
119 and compliance by taxpayers, the tax commissioner may
120 require distributors, importers and other persons liable
121 for the tax imposed by this article on sales of gasoline
122 or special fuel, to file a combined return and make a
123 combined payment of the tax due under this article on
124 sales of gasoline and special fuel, and the tax due under
125 article fourteen of this chapter, on gasoline and special
126 fuel. In order to encourage use of a combined return
127 each month and the making of a single payment each
128 month for both taxes, the due date of the return and tax
129 due under article fourteen of this chapter is hereby
130 changed from the last day of each month to the twenty-
131 fifth day of each month, notwithstanding any provision
132 in article fourteen of this chapter to the contrary.

133 (g) *Dedication of tax to highways.*—All tax collected
134 under the provisions of this section after deducting the
135 amount of any refunds lawfully paid, shall be deposited
136 in the “road fund” in the state treasurer’s office, and
137 shall be used only for the purpose of construction,
138 reconstruction, maintenance and repair of highways,
139 and payment of principal and interest on state bonds
140 issued for highway purposes: *Provided*, That notwith-
141 standing any provision to the contrary, any tax collected
142 on the sale of aircraft fuel shall be deposited in the state
143 treasurer’s office and transferred to the state aeronaut-
144 ical commission to be used for the purpose of matching
145 federal funds available for the reconstruction, mainte-
146 nance and repair of public airports and airport
147 runways.

148 (h) *Construction.*—This section shall not be construed
149 as taxing any sale of gasoline or special fuel which this
150 state is prohibited from taxing under the constitution of

151 this state or the constitution or laws of the United
152 States.

153 (i) *Effective date.*—The provisions of chapter one
154 hundred seventy-nine of the Acts of the Legislature, one
155 thousand nine hundred eighty-three, shall take effect on
156 the first day of April, one thousand nine hundred eighty-
157 three. The amendments to this section made by the
158 Legislature in the Regular Session, one thousand nine
159 hundred eighty-nine, shall be effective on the first day
160 of July, one thousand nine hundred eighty-nine.

§11-15-33. Effective date.

1 (a) The provisions of this article as amended or added
2 by Senate Bill No. 1 took effect on the first day of
3 March, one thousand nine hundred eighty-nine, and
4 apply to all sales made on or after that date: *Provided*,
5 That if an effective date was expressly provided in a
6 provision of such act, that specific effective date
7 controlled in lieu of this general effective date provision.

8 (b) The provisions of this article as amended or added
9 by this act shall take effect on the first day of July, one
10 thousand nine hundred eighty-nine, and apply to all
11 sales made on or after that date: *Provided*, That if an
12 effective date is expressly provided in such provision,
13 that specific effective date shall control in lieu of this
14 general effective date provision.

ARTICLE 15A. USE TAX.

§11-15A-2a. Tax on value of property used or consumed in this state.

§11-15A-3b. Method for claiming exemptions, refunds of tax, credit against other taxes.

§11-15A-3c. Delivery of a certificate of exemption in lieu of tax.

§11-15A-3d. Direct pay permits.

§11-15A-6a. Collection by certain other retailers.

§11-15A-29. Effective date.

§11-15A-2a. Tax on value of property used or consumed in this state.

1 (a) Except as otherwise provided, a person who
2 produces for sale, profit or commercial use, any natural
3 resource, product or manufactured product, and uses or
4 consumes such natural resource, product or manufac-

5 tured product, in this state shall make returns of the
6 gross value of the natural resource, product or manu-
7 factured product, so used or consumed by him in this
8 state, and pay the tax imposed by this article, when such
9 use or consumption is not otherwise exempt under this
10 article.

11 (b) The tax commissioner shall promulgate such
12 uniform and equitable rules as he deems necessary for
13 determining the gross value upon which the tax imposed
14 by this article is levied in the absence of a sale, which
15 value shall correspond as nearly as possible to the gross
16 proceeds from the sale of similar products of like quality
17 or character by the same person or by another person.

18 (c) A person who purchases or leases machinery or
19 equipment or other tangible personal property for use
20 in another state and then uses or consumes such
21 property in this state shall pay the tax imposed by this
22 article on the value of the property so used or consumed
23 in this state. The tax commissioner shall promulgate
24 such uniform and equitable rules as he deems necessary
25 for determining the measure of the tax imposed by this
26 article with respect to such property.

27 (d) The provisions of this section shall apply to
28 property used or consumed in this state on or after the
29 first day of May, one thousand nine hundred eighty-nine.

**§11-15A-3b. Method for claiming exemptions, refunds of
tax, credit against other taxes.**

1 (a) Any person having a right or claim to an exemp-
2 tion from the tax imposed by this article by reason of
3 any exemption set forth in section nine, article fifteen
4 of this chapter except those exemptions set forth in
5 subsections (a), (b), (c), (d), (f), (h), (i), (j), (m), (n), (o),
6 (p), (q), (r), (s), (t), (u), (w), (x), (y), (z), (aa), (cc), (dd),
7 (ee), (ff) (gg), (hh) and (ii) of said section nine, shall pay
8 to the vendor the tax imposed by this article and may
9 exercise or assert such exemption only in accordance
10 with subsection (b) or subsection (c) of this section.

11 (b) Any person who has paid the tax imposed by this
12 article and who may lawfully claim under section three

13 of this article any exemption set forth under a subsec-
14 tion of section nine of article fifteen not enumerated in
15 subsection (a) of this section may exercise or assert such
16 claim by filing a claim for refund of use tax overpay-
17 ments on such form and in such manner as the tax
18 commissioner may require and in accordance with the
19 requirements of this section.

20 (c) In lieu of filing a claim for refund of use tax
21 overpayments, the taxpayer may, at his option, file a
22 claim for credit on such form and in such manner as
23 the tax commissioner may require and credit the
24 amount of use tax overpayments against certain pay-
25 ments of tax due in accordance with the requirements
26 of this section as follows:

27 (1) If the taxpayer is required to remit the tax
28 imposed under this article or article fifteen of this
29 chapter pursuant to section five or subsection (b) of
30 section nine-d of said article fifteen or subsection (b) of
31 section three-d of this article, the taxpayer may credit
32 the amount of use tax overpayments against the
33 remittance of the tax imposed under said articles
34 otherwise due; or

35 (2) If the taxpayer is subject to the tax imposed under
36 article thirteen of this chapter, the taxpayer may credit
37 the amount of use tax overpayments remaining after
38 application of part (1) of this subsection against the
39 taxpayer's quarterly or monthly remittance of the tax
40 imposed under said article thirteen otherwise due; or

41 (3) If the taxpayer is subject to the tax imposed under
42 article twelve-a of this chapter, the taxpayer may credit
43 the amount of use tax overpayments remaining after
44 application of parts (1) and (2) of this subsection against
45 the taxpayer's annual or semiannual remittance of the
46 tax imposed under said article twelve-a otherwise due;
47 or

48 (4) If the taxpayer is subject to the tax imposed under
49 article thirteen-a of this chapter, the taxpayer may
50 credit the amount of use tax overpayments remaining
51 after application of parts (1), (2) and (3) of this
52 subsection against the taxpayer's quarterly or monthly

53 remittance of the tax imposed under said article
54 thirteen-a otherwise due; or

55 (5) If the taxpayer is subject to the tax imposed under
56 article thirteen-b of this chapter, the taxpayer may
57 credit the amount of use tax overpayments remaining
58 after application of parts (1), (2), (3) and (4) of this
59 subsection against the taxpayer's quarterly or monthly
60 remittance of the tax imposed under said article
61 thirteen-b otherwise due; or

62 (6) If the taxpayer is subject to the tax imposed under
63 article twenty-four of this chapter, the taxpayer may
64 credit the amount of use tax overpayments remaining
65 after application of parts (1), (2), (3), (4) and (5) of this
66 subsection against the taxpayer's installment of esti-
67 mated tax imposed under said article twenty-four and
68 otherwise due under section seventeen, article twenty-
69 four of this chapter; or

70 (7) If the taxpayer is subject to the tax imposed under
71 article twenty-one of this chapter, the taxpayer may
72 credit the amount of use tax overpayments remaining
73 after application of parts (1), (2), (3), (4), (5) and (6) of
74 this subsection against the taxpayer's installment of
75 estimated tax imposed under said article twenty-one and
76 otherwise due under section fifty-six, article twenty-one
77 of this chapter; or

78 (8) If the taxpayer is subject to the tax imposed under
79 article twenty-three of this chapter, the taxpayer may
80 credit the amount of use tax overpayments remaining
81 after application of parts (1), (2), (3), (4), (5), (6) and
82 (7) of this subsection against the taxpayer's annual
83 remittance of the tax imposed under said article twenty-
84 three and otherwise due; or

85 (9) If the taxpayer is required to deduct and withhold
86 tax under article twenty-one of this chapter, the
87 taxpayer may credit the amount of use tax overpay-
88 ments remaining after application of parts (1), (2), (3),
89 (4), (5), (6), (7) and (8) of this subsection against the
90 taxpayer's monthly remittance of the tax withheld
91 under said article twenty-one and otherwise due.

92 (d) Any person asserting or exercising a claim of
93 exemption from the tax imposed by this article under
94 subsections (b) or (c) of this section shall file with the
95 tax commissioner an application for exemption in such
96 form as the tax commissioner shall prescribe and such
97 affidavits, invoices, sales slips, records or documents as
98 the tax commissioner may require to prove or verify the
99 taxpayer's right and entitlement to such exemption. The
100 tax commissioner may inspect or examine the records,
101 books, papers, documents, affidavits, sales slips and
102 invoices of a taxpayer or any other person to verify the
103 truth and accuracy of any report or return or to
104 ascertain whether the tax imposed by this article or
105 article fifteen of this chapter has been paid.

106 In addition to the powers of the tax commissioner set
107 forth in article ten of this chapter, as a further means
108 of obtaining the records, books, papers, documents,
109 affidavits, sales slips or invoices of a taxpayer or any
110 other person and ascertaining the amount of taxes paid
111 or due under this article or article fifteen of this chapter
112 or any report, form, document or affidavit required
113 under this article or article fifteen of this chapter, the
114 commissioner shall have the power to examine witnesses
115 under oath; and if any witness shall fail or refuse at the
116 request of the commissioner to grant access to the books,
117 records, papers, documents, affidavits, sales slips or
118 invoices requested by the commissioner, the commis-
119 sioner shall certify the facts and the names to the circuit
120 court of the county having jurisdiction of the party, and
121 such court shall thereupon issue a subpoena duces tecum
122 to such party to appear before the commissioner, at a
123 place designated within the jurisdiction of such court,
124 on a day fixed.

125 (e) All claims for refund of use tax overpayments
126 under subsection (b) of this section shall be filed within
127 the time limitation for filing claims for refund set forth
128 in section fourteen, article ten of this chapter. Any claim
129 for such refund or claim of entitlement to such refund
130 made or asserted after the said time limitation shall be
131 null and void, and if the use tax overpayment has not
132 otherwise been credited against tax remittances in

133 accordance with this section, the said claims shall be
134 forfeited.

135 (f) Any credit of use tax overpayments against taxes
136 under subsection (c) of this section shall be taken within
137 one year after the payment of the tax by the taxpayer
138 to the vendor. Any such credit or claim of entitlement
139 to such credit made or asserted more than one year after
140 the payment of such tax by the taxpayer to the vendor
141 shall be null and void, and such tax overpayments shall
142 be forfeited.

143 (g) Any assignment of the right or entitlement to a
144 refund or credit arising under this section shall be
145 subject to strict proof, and any assignee claiming a right
146 or entitlement to an assigned refund or credit shall
147 submit an affidavit in such form as the tax commis-
148 sioner shall prescribe signed by the assignor acknowl-
149 edging the assignment. The assignee shall attest to the
150 assignment and the terms thereof of his signed appli-
151 cation filed under subsection (e) of this section for
152 refund or credit, and will be subject to the penalties
153 provided under West Virginia law for perjury for any
154 falsehood set forth therein and will be subject to the
155 penalties set forth in article nine of this chapter for any
156 violation thereof. Except as provided in this subsection
157 (h), no payment of a refund arising under this section
158 shall be made to any person other than the taxpayer
159 making the original overpayment of consumers sales
160 and service tax.

161 (h) No refund shall be due and no credit shall be
162 allowed unless the taxpayer or assignee shall have filed
163 a claim for refund or a claim for credit, as appropriate,
164 with the tax commissioner in accordance with this
165 section.

166 (i) Any claim for a refund of use tax overpayments or
167 a tax credit for use tax overpayments which is not
168 timely filed or not filed in proper form or in accordance
169 with the requirements of this section shall not be
170 construed to constitute a moral obligation of the state
171 of West Virginia for payment. No overpayment of use
172 tax made under this section shall be subject to subsec-

173 tion (d), section seventeen, article ten of this chapter, or
174 subdivision (1), subsection (e), section seventeen, article
175 ten of this chapter.

176 (j) The provisions of this section become effective after
177 the thirtieth day of June, one thousand nine hundred
178 eighty-seven.

§11-15A-3c. Delivery of a certificate of exemption in lieu of tax.

1 Persons having a right or claim under section three
2 of this article, to any exemption set forth in subsections
3 (a), (b), (c), (d), (f), (h), (i), (j), (m), (n), (o), (p), (q), (r),
4 (s), (t), (u), (w), (x), (y), (z), (aa), (cc), (dd), (ee), (ff), (gg),
5 (hh) and (ii), section nine, article fifteen of this chapter
6 shall, in lieu of paying the tax imposed by this article,
7 execute a certificate of exemption in such form as the
8 tax commissioner may require, and such executed
9 exemption certificate shall be delivered to the vendor in
10 such manner as the tax commissioner may require:
11 *Provided*, That the tax commissioner may identify
12 exemptions for which exemption certificates are not
13 required and as soon as practical may specify by
14 regulation exemptions for which exemption certificates
15 are not required.

§11-15A-3d. Direct pay permits.

1 (a) Notwithstanding any other provision of this
2 article, the tax commissioner may, pursuant to rules and
3 regulations promulgated by him in accordance with
4 article three, chapter twenty-nine-a of this code,
5 authorize a person (as defined in section two of article
6 fifteen) that is a user, consumer, distributor or lessee to
7 which sales or leases of tangible personal property are
8 made or services provided to pay any tax levied by this
9 article or article fifteen of this chapter directly to the
10 tax commissioner and waive the collection of the tax by
11 that person's vendor. No such authority shall be granted
12 or exercised except upon application to the tax commis-
13 sioner and after issuance by the tax commissioner of a
14 direct pay permit. Upon issuance of such direct pay
15 permit, payment of the tax imposed or assertion of the
16 exemptions allowed by this article or article fifteen of
17 this chapter on sales and leases of tangible personal

18 property and sales of taxable services from the vendors
19 thereof shall be made directly to the tax commissioner
20 by the permit holder.

21 (b) On or before the fifteenth day of each month, every
22 permit holder shall make and file with the tax commis-
23 sioner a consumers sales and use tax direct pay permit
24 return for the preceding month in the form prescribed
25 by the tax commissioner showing the total value of the
26 tangible personal property so used, the amount of
27 taxable services purchased, the amount of tax due from
28 the permit holder, which amount shall be paid to the tax
29 commissioner with such return, and such other informa-
30 tion as the tax commissioner deems necessary: *Provided,*
31 That if the amount of consumers sales and use taxes due
32 averages less than one hundred dollars per month, the
33 tax commissioner may permit the filing of quarterly
34 returns in lieu of monthly returns and the amount of tax
35 shown thereon to be due shall be remitted on or before
36 the fifteenth day following the close of the calendar
37 quarter; and if the amount due averages less than fifty
38 dollars per calendar quarter, the tax commissioner may
39 permit the filing of an annual direct pay permit return
40 and the amount of tax shown thereon to be due shall be
41 remitted on or before the last day of January each year.
42 The tax commissioner, upon written request filed by the
43 permit holder before the due date of the return, may
44 grant a reasonable extension of time, upon such terms
45 as the tax commissioner may require, for the making
46 and filing of direct pay permit returns and paying the
47 tax due. Interest on such tax shall be chargeable on
48 every such extended payment at the rate specified in
49 section seventeen, article ten of this chapter.

50 (c) A permit issued pursuant to this section shall
51 continue to be valid until expiration of the taxpayer's
52 registration year under article twelve of this chapter.
53 This permit shall automatically be renewed when the
54 taxpayer's business registration certificate is issued for
55 the next succeeding fiscal year, unless the permit is
56 surrendered by the holder or canceled for cause by the
57 tax commissioner.

58 (d) Persons who hold a direct payment permit which

59 has not been canceled shall not be required to pay the
60 tax to the vendor as otherwise provided in this article
61 or article fifteen of this chapter. Such persons shall
62 notify each vendor from whom tangible personal
63 property is purchased or leased or from whom services
64 are purchased of their direct payment permit number
65 and that the tax is being paid directly to the tax
66 commissioner. Upon receipt of such notice, such vendor
67 shall be absolved from all duties and liabilities imposed
68 by this chapter for the collection and remittance of the
69 tax with respect to sales, distributions, leases or storage
70 of tangible personal property and sales of services to
71 such permit holder. Vendors who make sales upon
72 which the tax is not collected by reason of the provisions
73 of this section shall maintain records in such manner
74 that the amount involved and identity of each such
75 purchaser may be ascertained.

76 (e) Upon the expiration, cancellation or surrender of
77 a direct payment permit, the provisions of this chapter,
78 without regard to this section, shall thereafter apply to
79 the person who previously held such permit, and such
80 person shall promptly so notify in writing vendors from
81 whom tangible personal property or services are
82 purchased of such cancellation or surrender. Upon
83 receipt of such notice, the vendor shall be subject to the
84 provisions of this chapter, without regard to this section,
85 with respect to all sales of tangible personal property
86 or taxable services, thereafter made to or for such
87 person.

§11-15A-6a. Collection by certain other retailers.

1 (a) *Duty to collect tax.*—For purposes of this article
2 and for collection of use tax required under section six
3 of this article, a retailer engaging in business in this
4 state also means and includes any of the following:

5 (1) Any retailer soliciting orders from persons located
6 in this state for the sale of tangible personal property
7 or taxable services by means of a telecommunication or
8 television shopping system which utilizes a telephone or
9 mail ordering system, including toll free telephone
10 numbers, reverse charge telephone systems or other

11 telephone ordering systems and which is intended by the
12 retailer to be broadcast by cable television or other
13 means of broadcasting, to consumers located in this
14 state: *Provided*, That such retailer has physical presence
15 in this state in the form of employees, offices, agents or
16 sales outlets in this state, or any other presence that
17 provides the necessary minimum contacts for a consti-
18 tutionally sufficient nexus for a state to require such a
19 retailer to collect and remit use taxes.

20 (2) Any retailer who solicits orders from persons
21 located in this state for the sale of tangible personal
22 property or taxable services by means of advertising
23 that is broadcast from, printed at, or distributed from,
24 a location in this state if the advertising is primarily
25 intended to be disseminated to consumers located in this
26 state and is only secondarily or incidentally dissemi-
27 nated to bordering jurisdictions. For purposes of this
28 paragraph, advertising which is broadcast from a radio
29 or television station located in this state or is printed in
30 or distributed by a newspaper published in this state is
31 rebuttably presumed to be primarily intended for
32 dissemination to consumers located in this state:
33 *Provided*, That such retailer has physical presence in
34 this state in the form of employees, offices, agents or
35 sales outlets in this state, or any other presence that
36 provides the necessary minimum contacts for a consti-
37 tutionally sufficient nexus for a state to require such a
38 retailer to collect and remit use taxes.

39 (3) Any retailer soliciting orders from persons located
40 in this state for the sale of tangible personal property
41 or taxable services by mail if the solicitations are
42 substantial and recurring and if the retailer economi-
43 cally benefits from any banking, financing, debt
44 collection, telecommunication or marketing activities
45 occurring in this state or economically benefits from the
46 location in this state of an authorized installation,
47 servicing or repair facility, regardless of whether such
48 facility is owned or operated by such retailer or by a
49 related or unrelated person: *Provided*, That such retailer
50 has physical presence in this state in the form of
51 employees, offices, agents or sales outlets in this state,

52 or any other presence that provides the necessary
53 minimum contacts for a constitutionally sufficient nexus
54 for a state to require such a retailer to collect and remit
55 use taxes.

56 (4) Any retailer having a franchisee or licensee
57 operating in this state under the retailer's trade name,
58 if the franchisee or licensee is required to collect the tax
59 imposed by this article or article fifteen of this chapter:
60 *Provided*, That such retailer has physical presence in
61 this state in the form of employees, offices, agents or
62 sales outlets in this state, or any other presence that
63 provides the necessary minimum contacts for a consti-
64 tutionally sufficient nexus for a state to require such a
65 retailer to collect and remit use taxes.

66 (5) Any retailer who, pursuant to a contract with a
67 cable television operator located in this state, solicits
68 from persons located in this state orders for the sale of
69 tangible personal property or taxable services by means
70 of advertising which is transmitted or distributed over
71 a cable television system in this state: *Provided*, That
72 such retailer has physical presence in this state in the
73 form of employees, offices, agents or sales outlets in this
74 state, or any other presence that provides the necessary
75 minimum contacts for a constitutionally sufficient nexus
76 for a state to require such a retailer to collect and remit
77 use taxes.

78 (b) *Exemption from payment of business registration*
79 *tax.*—Any retailer required to collect use tax under the
80 provisions of subsection (a) of this section shall be
81 required to obtain a business registration certificate, as
82 provided in article twelve of this chapter, but shall be
83 exempt from payment of the tax levied by subsection (b),
84 section three of said article twelve, unless the retailer
85 has sufficient presence in this state so that required
86 payment of the tax does not violate any provision of the
87 constitution or laws of this state or of the United States.

88 (c) *Effective date.*—The provisions of this section shall
89 become effective the first day of July, one thousand nine
90 hundred eighty-nine, and apply to sales of tangible
91 personal property or taxable services made on or after
92 that date.

§11-15A-29. Effective date.

1 (a) The provisions of this article as amended or added
2 by Senate Bill No. 1 took effect on the first day of
3 March, one thousand nine hundred eighty-nine, and
4 apply to all purchases made or used in this state on or
5 after that date: *Provided*, That if an effective date was
6 expressly provided in a provision of such act, that
7 specific effective date controlled in lieu of this general
8 effective date provision.

9 (b) The provisions of this article as amended or added
10 by this act shall take effect on the first day of July, one
11 thousand nine hundred eighty-nine, and apply to all
12 purchases made or used in this state on or after that
13 date: *Provided*, That if an effective date is expressly
14 provided in such provision, that specific effective date
15 shall control in lieu of this general effective date
16 provision.

ARTICLE 21. PERSONAL INCOME TAX.**§11-21-12. West Virginia adjusted gross income of resident individual.**

1 (a) *General*.—The West Virginia adjusted gross
2 income of a resident individual means his federal
3 adjusted gross income as defined in the laws of the
4 United States for the taxable year with the modifica-
5 tions specified in this section.

6 (b) *Modifications increasing federal adjusted gross*
7 *income*.—There shall be added to federal adjusted gross
8 income unless already included therein the following
9 items:

10 (1) Interest income on obligations of any state other
11 than this state, or of a political subdivision of any such
12 other state unless created by compact or agreement to
13 which this state is a party;

14 (2) Interest or dividend income on obligations or
15 securities of any authority, commission or instrumental-
16 ity of the United States, which the laws of the United
17 States exempt from federal income tax but not from
18 state income taxes;

19 (3) Income taxes imposed by this state or any other
20 taxing jurisdiction, to the extent deductible in determin-
21 ing federal adjusted gross income and not credited
22 against federal income tax: *Provided*, That this modifi-
23 cation shall not be made for taxable years beginning
24 after the thirty-first day of December, one thousand nine
25 hundred eighty-six;

26 (4) Interest on indebtedness incurred or continued to
27 purchase or carry obligations or securities the income
28 from which is exempt from tax under this article, to the
29 extent deductible in determining federal adjusted gross
30 income;

31 (5) Interest on a depository institution tax-exempt
32 savings certificate which is allowed as an exclusion from
33 federal gross income under section 128 of the Internal
34 Revenue Code, for the federal taxable year;

35 (6) The amount allowed as a deduction from federal
36 gross income under section 221 of the Internal Revenue
37 Code by married couples who file a joint federal return
38 for the federal taxable year: *Provided*, That this
39 modification shall not be made for taxable years
40 beginning after the thirty-first day of December, one
41 thousand nine hundred eighty-six;

42 (7) The deferral value of certain income that is not
43 recognized for federal tax purposes, which value shall
44 be an amount equal to a percentage of the amount
45 allowed as a deduction in determining federal adjusted
46 gross income pursuant to the accelerated cost recovery
47 system under section 168 of the Internal Revenue Code
48 for the federal taxable year, with the percentage of the
49 federal deduction to be added as follows with respect to
50 the following recovery property: Three-year property—
51 no modification; five-year property—ten percent; ten-
52 year property—fifteen percent; fifteen-year public
53 utility property—twenty-five percent; and fifteen-year
54 real property—thirty-five percent: *Provided*, That this
55 modification shall not apply to any person whose federal
56 deduction is determined by the use of the straight line
57 method: *Provided, however*, That this modification shall
58 not be made for taxable years beginning after the thirty-
59 first day of December, one thousand nine hundred

60 eighty-six; and

61 (8) The amount of a lump sum distribution for which
62 the taxpayer has elected under section 402(e) of the
63 Internal Revenue Code of 1986, as amended, to be
64 separately taxed for federal income tax purposes.

65 (c) *Modifications reducing federal adjusted gross*
66 *income.*—There shall be subtracted from federal ad-
67 justed gross income to the extent included therein:

68 (1) Interest income on obligations of the United States
69 and its possessions to the extent includible in gross
70 income for federal income tax purposes;

71 (2) Interest or dividend income on obligations or
72 securities of any authority, commission or instrumental-
73 ity of the United States or of the state of West Virginia
74 to the extent includible in gross income for federal
75 income tax purposes but exempt from state income
76 taxes under the laws of the United States or of the state
77 of West Virginia, including federal interest or dividends
78 paid to shareholders of a regulated investment company,
79 under section 852 of the Internal Revenue Code for
80 taxable years ending after the thirtieth day of June, one
81 thousand nine hundred eighty-seven;

82 (3) Any gain from the sale or other disposition of
83 property having a higher fair market value on the first
84 day of January, one thousand nine hundred sixty-one,
85 than the adjusted basis at said date for federal income
86 tax purposes: *Provided*, That the amount of this
87 adjustment is limited to that portion of any such gain
88 which does not exceed the difference between such fair
89 market value and such adjusted basis: *Provided*,
90 *however*, That if such gain is considered a long-term
91 capital gain for federal income tax purposes, the
92 modification shall be limited to forty percent of such
93 portion of the gain: *Provided further*, That this modifi-
94 cation shall not be made for taxable years beginning
95 after the thirty-first day of December, one thousand nine
96 hundred eighty-six;

97 (4) The amount of any refund or credit for overpay-
98 ment of income taxes imposed by this state, or any other
99 taxing jurisdiction, to the extent properly included in
100 gross income for federal income tax purposes;

101 (5) Annuities, retirement allowances, returns of
102 contributions and any other benefit received under the
103 West Virginia public employees retirement system, the
104 West Virginia state teachers retirement system and all
105 forms of military retirement, including regular armed
106 forces, reserves and national guard, including any
107 survivorship annuities derived therefrom, to the extent
108 includible in gross income for federal income tax
109 purposes: *Provided*, That notwithstanding any provi-
110 sions in this code to the contrary this modification shall
111 be limited to the first two thousand dollars of benefits
112 received under the West Virginia public employees
113 retirement system, the West Virginia state teachers
114 retirement system and all forms of military retirement
115 including regular armed forces, reserves and national
116 guard, including any survivorship annuities derived
117 therefrom, to the extent includible in gross income for
118 federal income tax purposes for taxable years beginning
119 after the thirty-first day of December, one thousand nine
120 hundred eighty-six; and the first two thousand dollars
121 of benefits received under any federal retirement system
122 to which Title 4 USC § 111 applies: *Provided, however*,
123 That the total modification under this paragraph shall
124 not exceed two thousand dollars per person receiving
125 such retirement benefits and this limitation shall apply
126 to all returns or amended returns filed after the last day
127 of December, one thousand nine hundred eighty-eight;

128 (6) Retirement income received in the form of pen-
129 sions and annuities after the thirty-first day of De-
130 cember, one thousand nine hundred seventy-nine, under
131 any West Virginia police, West Virginia firemen's
132 retirement system or the West Virginia department of
133 public safety death, disability and retirement fund,
134 including any survivorship annuities derived therefrom,
135 to the extent includible in gross income for federal
136 income tax purposes;

137 (7) Federal adjusted gross income in the amount of

138 eight thousand dollars received from any source after
139 the thirty-first day of December, one thousand nine
140 hundred eighty-six, by any person who has attained the
141 age of sixty-five on or before the last day of the taxable
142 year, or by any person certified by proper authority as
143 permanently and totally disabled, regardless of age, on
144 or before the last day of the taxable year, to the extent
145 includible in federal adjusted gross income for federal
146 tax purposes: *Provided*, That if a person has a medical
147 certification from a prior year and he is still perman-
148 ently and totally disabled, a copy of the original
149 certificate is acceptable as proof of disability. A copy of
150 the form filed for the federal disability income tax
151 exclusion is acceptable: *Provided, however*, That

152 (i) Where the total modification under subdivisions
153 (1), (2), (5) and (6) of this subsection is eight thousand
154 dollars per person or more, no deduction shall be
155 allowed under this subdivision; and

156 (ii) Where the total modification under subdivisions
157 (1), (2), (5) and (6) of this subsection is less than eight
158 thousand dollars per person, the total modification
159 allowed under this subdivision for all gross income
160 received by such person shall be limited to the differ-
161 ence between eight thousand dollars and the sum of
162 modifications under such subdivisions;

163 (8) Federal adjusted gross income in the amount of
164 eight thousand dollars received from any source after
165 the thirty-first day of December, one thousand nine
166 hundred eighty-six, by the surviving spouse of any
167 person who had attained the age of sixty-five or who had
168 been certified as permanently and totally disabled, to
169 the extent includible in federal adjusted gross income
170 for federal tax purposes: *Provided*, That

171 (i) Where the total modification under subdivisions
172 (1), (2), (5), (6) and (7) of this subsection is eight
173 thousand dollars or more, no deduction shall be allowed
174 under this subdivision; and

175 (ii) Where the total modification under subdivisions
176 (1), (2), (5), (6) and (7) of this subsection is less than

177 eight thousand dollars per person, the total modification
178 allowed under this subdivision for all gross income
179 received by such person shall be limited to the differ-
180 ence between eight thousand dollars and the sum of such
181 subdivisions;

182 (9) Any pay or allowances received, after the thirty-
183 first day of December, one thousand nine hundred
184 seventy-nine, by West Virginia residents who have not
185 attained the age of sixty-five, as compensation for active
186 service in the armed forces of the United States:
187 *Provided*, That such deduction shall be limited to an
188 amount not to exceed four thousand dollars: *Provided*,
189 *however*, That this modification shall not be made for
190 taxable years beginning after the thirty-first day of
191 December, one thousand nine hundred eighty-six;

192 (10) Gross income to the extent included in federal
193 adjusted gross income under section 86 of the Internal
194 Revenue Code for federal income tax purposes:
195 *Provided*, That this modification shall not be made for
196 taxable years beginning after the thirty-first day of
197 December, one thousand nine hundred eighty-six;

198 (11) The amount of any lottery prize awarded by the
199 West Virginia state lottery commission, to the extent
200 properly included in gross income for federal income tax
201 purposes; and

202 (12) Any other income which this state is prohibited
203 from taxing under the laws of the United States.

204 (d) *Modification for West Virginia fiduciary adjust-*
205 *ment.*—There shall be added to or subtracted from
206 federal adjusted gross income, as the case may be, the
207 taxpayer's share, as beneficiary of an estate or trust, of
208 the West Virginia fiduciary adjustment determined
209 under section nineteen of this article.

210 (e) *Partners and S corporation shareholders.*—The
211 amounts of modifications required to be made under this
212 section by a partner or an S corporation shareholder,
213 which relate to items of income, gain, loss or deduction
214 of a partnership or an S corporation, shall be deter-
215 mined under section seventeen of this article.

216 (f) *Husband and wife*.—If husband and wife deter-
217 mine their federal income tax on a joint return but
218 determine their West Virginia income taxes separately,
219 they shall determine their West Virginia adjusted gross
220 incomes separately as if their federal adjusted gross
221 incomes had been determined separately.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-9c. Research and development credit against primary tax.

1 A credit shall be allowed against the primary tax
2 imposed by this article, which shall be the research and
3 development credit as provided in sections three and
4 three-b, article thirteen-d of this chapter for taxable
5 years beginning after the thirty-first day of December,
6 one thousand nine hundred eighty-eight: *Provided*, That
7 the amount of this credit may not reduce by more than
8 fifty percent the amount of the net tax liability of the
9 taxpayer for the taxable year: *Provided, however*, That
10 one-tenth of the entire amount of the eligible investment,
11 upon which the credit is predicated pursuant to sections
12 three and three-b, article thirteen-d of this chapter,
13 taken as a deduction in determining its federal taxable
14 income for the taxable year shall be an adjustment
15 increasing federal taxable income under section six of
16 this article: *Provided further*, That the taxpayer may at
17 its option elect in lieu of claiming the credit allowable
18 by this section to not increase its federal taxable income
19 under section six of this article and thereby take as a
20 full deduction under this article for the taxable year the
21 amount of its eligible investment in research and
22 development for the taxable year, which was taken as
23 a deduction on its federal return for such taxable year.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 1. DEFINITIONS.

§17-1-3. “Road”; “public road”; “highway.”

1 The words or terms “road,” “public road,” or “high-
2 way” shall be deemed to include, but shall not be limited
3 to, the right-of-way, roadbed and all necessary culverts,

4 sluices, drains, ditches, waterways, embankments,
5 slopes, retaining walls, bridges, tunnels and viaducts
6 necessary for the maintenance of travel, dispatch of
7 freight and communication between individuals and
8 communities; and such public road or highway shall be
9 taken to include any road to which the public has access
10 and which it is not denied the right to use, or any road
11 or way leading from any other public road over the land
12 of another person, and which shall have been established
13 pursuant to law. Any road shall be conclusively pre-
14 sumed to have been established when it has been used
15 by the public for a period of ten years or more, and
16 public moneys or labor have been expended thereon,
17 whether there be any record of its conveyance, dedica-
18 tion or appropriation to public use or not. In the absence
19 of any other mark or record, the center of the traveled
20 way shall be taken as the center of the road and the
21 right-of-way shall be designated therefrom an equal
22 distance on each side, but a road may be constructed on
23 any part of the located right-of-way when it is deemed
24 advisable so to do.

25 The Legislature notes that there are public highways
26 that run over the surface of this land, over and through
27 the navigable streams, rivers and waterways on this
28 earth and above the surface of this earth in the form
29 of highways in the sky, commonly known as airways.
30 The Legislature finds that each of these types of public
31 highways are essential to the development of this state
32 and that the health and safety of each of the citizens of
33 this state are affected daily by the availability of each
34 of these three types of public highways, and that it is
35 the best interests of the people of this state that each
36 of these be recognized and included within the meaning
37 of public highways. The Legislature further recognizes
38 that airports are an important and integral part of the
39 public highways existing above the surface of this state,
40 and that airports are necessary to access such highways,
41 and therefore airports, including runways, taxiways,
42 parking ramps, access roads and air traffic control
43 facilities located at airports, are hereby declared to be
44 part of the public highway system of this state.

CHAPTER 202

(H. B. 2604—By Mr. Speaker, Mr. Chambers)

[Passed March 30, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven, ten and seventeen-b, article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eleven, article seven, chapter twenty-one-a of said code; to amend and reenact sections nineteen and twenty-one, article ten, chapter twenty-one-a of said code; and to further amend said article ten by adding thereto a new section, designated section twenty-two, all relating to unemployment compensation.

Be it enacted by the Legislature of West Virginia:

That sections seven, ten and seventeen-b, article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section eleven, article seven, chapter twenty-one-a of said code be amended and reenacted; that sections nineteen and twenty-one, article ten of said chapter be amended and reenacted; and that said article ten be further amended by adding thereto a new section, designated section twenty-two, all to read as follows:

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

Article

- 5. Employer Coverage and Responsibility.
- 7. Claim Procedure.
- 10. General Provisions.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-7. Joint and separate accounts.

§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.

§21A-5-17b. Comity in collection of past-due payments and overpayments.

§21A-5-7. Joint and separate accounts.

- 1 (1) The commissioner shall maintain a separate

2 account for each employer, and shall credit his account
3 with all contributions paid by him prior to July first,
4 one thousand nine hundred sixty-one. On and after July
5 first, one thousand nine hundred sixty-one, the commis-
6 sioner shall maintain a separate account for each
7 employer, and shall credit said employer's account with
8 all contributions of such employer in excess of seven
9 tenths of one percent of taxable wages; and on and after
10 July first, one thousand nine hundred seventy-one, the
11 commissioner shall maintain a separate account for each
12 employer, and shall credit said employer's account with
13 all contributions of such employer in excess of four
14 tenths of one percent of taxable wages: *Provided*, That
15 any adjustment made in any employer's account after
16 the computation date shall not be used in the computa-
17 tion of the balance of an employer until the next
18 following computation date: *Provided, however*, That
19 nothing in this chapter shall be construed to grant an
20 employer or individual in his service prior claims or
21 rights to the amounts paid by him into the fund, either
22 on his behalf or on behalf of such individuals. The
23 account of any employer which had been inactive for a
24 period of four consecutive calendar years shall be
25 terminated for all purposes.

26 (2) Benefits paid to an eligible individual for regular
27 and extended total or partial unemployment beginning
28 after the effective date of this article shall be charged
29 to the account of the last employer with whom he has
30 been employed as much as thirty working days, whether
31 or not such days are consecutive: *Provided*, That no
32 employer's account shall be charged with benefits paid
33 to any individual who has been separated from a
34 noncovered employing unit in which he was employed
35 as much as thirty days, whether or not such days are
36 consecutive: *Provided, however*, That no employer's
37 account shall be charged with more than fifty percent
38 of the benefits paid to an eligible individual as extended
39 benefits under the provisions of article six-a of this
40 chapter: *Provided further*, That state and local govern-
41 ment employers shall be charged with one hundred
42 percent of the benefits paid to an eligible individual as
43 extended benefits. Beginning on July one, one thousand

44 nine hundred eighty-four, benefits paid to an individual
45 are to be charged to the accounts of his employers in
46 the base period, the amount of such charges, chargeable
47 to the account of each such employer, to be that portion
48 of the total benefits paid such individual as the wages
49 paid him by such employer in the base period are to the
50 total wages paid him during his base period for insured
51 work by all his employers in the base period. For the
52 purposes of this section, no base period employer's
53 account shall be charged for benefits paid under this
54 chapter to a former employee, provided such base period
55 employer furnishes separation information within
56 fourteen days from the date the notice was mailed or
57 delivered, which results in a disqualification under the
58 provision set forth in subsection one, section three,
59 article six, or subsection two, section three, article six
60 of this chapter or would have resulted in a disqualifi-
61 cation under such subsection except for a subsequent
62 period of covered employment by another employing
63 unit. Further, no contributory base period employer's
64 experience rating account shall be charged for benefits
65 paid under this chapter to an individual who has been
66 continuously employed by that employer on a part-time
67 basis, if the part-time employment continues while the
68 individual is separated from other employment and is
69 otherwise eligible for benefits. One half of extended
70 benefits paid to an individual after July one, one
71 thousand nine hundred eighty-four, and subsequent
72 years are to be charged to the accounts of his employers,
73 except state and local government employers, in the
74 base period in the same manner provided for the
75 charging of regular benefits. Effective the first day of
76 January, one thousand nine hundred eighty-eight, the
77 entire state share of extended benefits paid to an
78 individual shall be charged to the accounts of his base
79 period employers. The provisions of this section permit-
80 ting the noncharging of contributory employers' ac-
81 counts have no application to benefit charges imposed
82 upon reimbursable employers.

83 (3) The commissioner shall, for each calendar year
84 hereafter, classify employers in accordance with their
85 actual experience in the payment of contributions on

86 their own behalf and with respect to benefits charged
87 against their accounts, with a view of fixing such
88 contribution rates as will reflect such experiences. For
89 the purpose of fixing such contribution rates for each
90 calendar year, the books of the department shall be
91 closed on July thirty-one of the preceding calendar year,
92 and any contributions thereafter paid, as well as
93 benefits thereafter paid with respect to compensable
94 weeks ending on or before June thirty of the preceding
95 calendar year, shall not be taken into account until the
96 next annual date for fixing contribution rates: *Provided*,
97 That if an employer has failed to furnish to the
98 commissioner on or before July thirty-one of such
99 preceding calendar year the wage information for all
100 past periods necessary for the computation of the
101 contribution rate, such employer's rate shall be, if it is
102 immediately prior to such July thirty-one, less than
103 three and three-tenths percent, increased to three and
104 three-tenths percent: *Provided, however*, That any
105 payment made or any information necessary for the
106 computation of a reduced rate furnished on or before the
107 termination of an extension of time for such payment or
108 reporting of such information granted pursuant to a
109 regulation of the commissioner authorizing such extension,
110 shall be taken into account for the purposes of
111 fixing contribution rates: *Provided further*, That when
112 the time for filing any report or making any payment
113 required hereunder falls on Saturday, Sunday, or a legal
114 holiday, the due date shall be deemed to be the next
115 succeeding business day: *And provided further*, That
116 whenever, through mistake or inadvertence, erroneous
117 credits or charges are found to have been made to or
118 against the reserved account of any employer, the rate
119 shall be adjusted as of January one of the calendar year
120 in which such mistake or inadvertence is discovered, but
121 payments, made under any rate assigned prior to
122 January one of such year, shall not be deemed to be
123 erroneously collected.

124 (4) The commissioner may prescribe regulations for
125 the establishment, maintenance and dissolution of joint
126 accounts by two or more employers, and shall in
127 accordance with such regulations and upon application

128 by two or more employers to establish such an account,
129 or to merge their several individual accounts in a joint
130 account, maintain such joint account as if it constituted
131 a single employer's account.

132 (5) State and local government employers are hereby
133 authorized to enter into joint accounts and to maintain
134 such joint account or accounts as if it or they constituted
135 a single employer's account or accounts.

136 (6) Effective on and after July one, one thousand nine
137 hundred eighty-one, if an employer has failed to furnish
138 to the commissioner on or before August thirty-one of
139 one thousand nine hundred eighty, and each year
140 thereafter, with the exception of one thousand nine
141 hundred eighty-one, which due date shall be September
142 thirty, one thousand nine hundred eighty-one, the wage
143 information for all past periods necessary for the
144 computation of the contribution rate, such employer's
145 rate shall be, if it is immediately prior to July one, one
146 thousand nine hundred eighty-one, less than seven and
147 five-tenths percent, increased to seven and five-tenths
148 percent.

§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.

1 On and after July one, one thousand nine hundred
2 eighty-one, an employer's payment shall remain two and
3 seven-tenths percent, until:

4 (1) There have elapsed thirty-six consecutive months
5 immediately preceding the computation date throughout
6 which an employer's account was chargeable with
7 benefits.

8 (2) His payments credited to his account for all past
9 years exceed the benefits charged to his account by an
10 amount equal to at least the percent of his average
11 annual payroll as shown in Column B of Table II. His
12 rate shall be the amount appearing in Column C of
13 Table II on line with the percentage in Column B.

14 When the total assets of the fund as of January one
15 of a calendar year equal or exceed one hundred percent

16 but are less than one hundred twenty-five percent of the
 17 average benefit payments from the trust fund for the
 18 three preceding calendar years, an employer's rate shall
 19 be the amount appearing in Column D of Table II on
 20 line with the percentage in Column B.

21 When the total assets of the fund as of January one
 22 of a calendar year equal or exceed one hundred twenty-
 23 five percent but are less than one hundred fifty percent,
 24 an employer's rate shall be the amount appearing in
 25 Column E of Table II on line with the percentage in
 26 Column B.

27 When the total assets of the fund as of January one
 28 of a calendar year equal or exceed one hundred fifty
 29 percent, an employer's rate shall be the amount
 30 appearing in Column F of Table II on line with the
 31 percentage in Column B.

32

TABLE II

33 Col. A	34 Col. B	35 Col. C	36 Col. D	37 Col. E	38 Col. F
	39 Percentage of 40 Average 41 Annual Payroll 42 By which 43 Credits Exceed 44 Employer's 45 Charges 46 Rate	47	48	49	50
40 (1)	0.0 to 6.0	4.5	3.5	2.5	1.5
41 (2)	6.0	4.1	3.1	2.1	1.1
42 (3)	7.0	3.9	2.9	1.9	0.9
43 (4)	8.0	3.7	2.7	1.7	0.7
44 (5)	9.0	3.5	2.5	1.5	0.5
45 (6)	10.0	3.3	2.3	1.3	0.3
46 (7)	10.5	3.1	2.1	1.1	0.1
47 (8)	11.0	2.9	1.9	0.9	0.0
48 (9)	11.5	2.7	1.7	0.7	0.0
49 (10)	12.0	2.5	1.5	0.5	0.0
50 (11)	12.5	2.3	1.3	0.3	0.0
51 (12)	13.0	2.1	1.1	0.1	0.0
52 (13)	14.0	1.9	0.9	0.0	0.0
53 (14)	16.0	1.7	0.7	0.0	0.0
54 (15)	18.0 and over	1.5	0.5	0.0	0.0

55 All employer accounts in which charges for all past
 56 years exceed credits for such past years shall be

57 adjusted effective June thirty, one thousand nine
58 hundred sixty-seven, so that as of said date, for the
59 purpose of determining such employer's rate of contri-
60 bution, the credits for all past years shall be deemed to
61 equal the charges to such accounts.

62 Effective on and after the computation date of June
63 thirty, one thousand nine hundred eighty-four, the
64 noncredited contribution identified in section seven of
65 this article shall not be added to the employer's debit
66 balance to determine the employer contribution rate.

67 Effective on and after the computation date of June
68 thirty, one thousand nine hundred sixty-seven, all
69 employers with a debit balance account in which the
70 benefits charged to their account for all past years
71 exceed the payments credited to their account for such
72 past years by an amount up to and including ten percent
73 of their average annual payroll, shall make payments to
74 the unemployment compensation fund at the rate of
75 three percent of wages paid by them with respect to
76 employment; except that effective on and after July one,
77 one thousand nine hundred eighty-one, all employers
78 with a debit balance account in which the benefits
79 charged to their account for all past years exceed the
80 payments credited to their account for such past years
81 by an amount up to and including five percent of their
82 average annual payroll, shall make payments to the
83 unemployment compensation fund at the rate of five and
84 five-tenths percent of wages paid by them with respect
85 to employment.

86 Effective on or after July one, one thousand nine
87 hundred eighty-one, all employers with a debit balance
88 account in which the benefits charged to their account
89 for all past years exceed the payments credited to their
90 account for such past years by an amount in excess of
91 five percent but less than ten percent of their average
92 annual payroll, shall make payments to the unemploy-
93 ment compensation fund at the rate of six and five-
94 tenths percent of wages paid by them with respect to
95 employment.

96 Effective on and after the computation date of June

97 thirty, one thousand nine hundred sixty-seven, all
98 employers with a debit balance account in which the
99 benefits charged to their account for all past years
100 exceed the payments credited to their account for such
101 past years by an amount of ten percent or above of their
102 average annual payroll, shall make payments to the
103 unemployment compensation fund at the rate of three
104 and three-tenths percent of wages paid by them with
105 respect to employment; except that effective on and
106 after July one, one thousand nine hundred eighty-one,
107 such payments to the unemployment compensation fund
108 shall be at the rate of seven and five-tenths percent of
109 wages paid by them with respect to employment or at
110 such other rate authorized by this article.

111 "Debit balance account" for the purpose of this section
112 means an account in which the benefits charged for all
113 past years exceed the payments credited for such past
114 years.

115 "Credit balance account" for the purposes of this
116 section means an account in which the payments
117 credited for all past years exceed the benefits charged
118 for such past years.

119 Once a debit balance account rate is established for
120 an employer's account for a year, it shall apply for the
121 entire year.

122 "Due date" means the last day of the month next
123 following a calendar quarter. In determining the
124 amount in the fund on any due date, contributions
125 received, but not benefits paid, for such month next
126 following the end of a calendar quarter shall be
127 included.

128 (a) Notwithstanding any other provision of this
129 section, every employer subject to the provisions of this
130 chapter shall, in addition to any other tax provided for
131 in this section, pay contributions at the rate of one
132 percent surtax on wages paid by him with respect to
133 employment, beginning January first, one thousand nine
134 hundred eighty-one, until such time that the commis-
135 sioner determines that the fund assets equal or exceed
136 the average benefits payments from the fund for the

137 preceding three calendar years at which time such
138 surtax shall be discontinued, and the commissioner shall
139 so notify the employers subject to the provisions of this
140 chapter.

141 (b) Notwithstanding any other provision of this
142 section, every debit balance employer subject to the
143 provisions of this chapter, and any foreign corporation
144 or business entity engaged in the construction trades
145 which has not been an employer in the state of West
146 Virginia for thirty-six consecutive months ending on the
147 computation date, shall, in addition to any other tax
148 provided for in this section, pay contributions at the rate
149 of one percent surtax on wages paid by him with respect
150 to employment for a period of eight years, beginning
151 January first, one thousand nine hundred eighty-six.

152 (c) Effective June thirty, one thousand nine hundred
153 eighty-five, and each computation date thereafter, the
154 reserve balance of a debit balance employer shall be
155 reduced to fifteen percent if such balance exceeds fifteen
156 percent. The amount of noncredited tax shall be reduced
157 by an amount equal to the eliminated charges. If the
158 eliminated charges exceed the amount of noncredited
159 tax, the noncredited tax shall be reduced to zero.

**§21A-5-17b. Comity in collection of past-due payments
and overpayments.**

1 The courts of this state shall recognize and enforce
2 liabilities for unemployment contributions imposed by
3 other states which extend a like comity to this state. The
4 commissioner in the name of this state is hereby
5 empowered to sue in the courts of any other jurisdiction
6 which extends such comity, to collect unemployment
7 contributions and interest due this state. The officials of
8 other states which by statute or otherwise extend a like
9 comity to this state may sue in the courts of this state,
10 to collect for such contributions and interest and
11 penalties if any, due such state; in any such case the
12 commissioner of employment security of this state may
13 through his legal assistant or assistants institute and
14 conduct such suit for such other state.

15 Notwithstanding any other provisions of this chapter,

16 the commissioner may recover an overpayment of
17 benefits paid to any individual under this state or
18 another state law or under an unemployment benefit
19 program of the United States.

ARTICLE 7. CLAIM PROCEDURE.

§21A-7-11. Benefits pending appeal.

1 Benefits found payable by decision of a deputy, appeal
2 tribunal, the board or court shall be immediately paid
3 in accordance therewith up to the week in which a
4 subsequent appellate body renders a decision, by order,
5 finding that benefits were not or are not payable. If, at
6 any appeal stage, benefits are found to be payable which
7 were found before such appeal stage to be not payable,
8 the commissioner shall immediately reinstate the
9 payment benefits. If the final decision in any case
10 determines that a claimant was not lawfully entitled to
11 benefits paid to him pursuant to a prior decision, such
12 amount of benefits so paid shall be deemed overpaid.
13 The commissioner shall recover such amount by civil
14 action or in any manner provided in this code for the
15 collection of past-due payment and shall withhold, in
16 whole or in part, as determined by the commissioner,
17 any future benefits payable to the individual and credit
18 such amount against the overpayment until it is repaid
19 in full. If the final decision in any case determines that
20 the claimant was not lawfully entitled to the benefits
21 paid to him pursuant to a prior order, any benefits so
22 paid pursuant to such prior order shall not be charge-
23 able to the employer's account.

24 (a) Whenever the commissioner finds that a claimant
25 has received back pay at his customary wage rate from
26 his employer such employee shall be liable to repay the
27 benefits, if any, paid to such individual for the time he
28 was unemployed. In any case in which, under this
29 section, an employee is liable to repay benefits to the
30 commissioner, such sum shall be collectible by civil
31 action in the name of the commissioner.

32 (b) Whenever an employer subject to this chapter is
33 required to make a payment of back pay to an individual
34 who has received unemployment compensation benefits

35 during the same period covered by the back pay award,
36 the employer shall withhold an amount equal to the
37 unemployment compensation benefits and shall repay
38 the amount withheld to the unemployment compensation
39 trust fund. If an employer fails to comply with this
40 section, the commissioner shall have the right to recover
41 from the employer the amount of unemployment
42 compensation benefits which should have been withheld
43 by a civil action.

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-19. Disclosure of information to child support agencies.

§21A-10-21. Recovery of benefits paid through error; limitation.

§21A-10-22. Disclosure of information to department of housing and urban development.

§21A-10-19. Disclosure of information to child support agencies.

1 (1) The department of employment security shall
2 disclose, upon request, to officers or employees of any
3 state or local child support enforcement agency, to
4 employees of the secretary of health and human services,
5 any wage information with respect to an identified
6 individual which is contained in its records.

7 The term "state or local child support enforcement
8 agency" means any agency of a state or political
9 subdivision thereof operating pursuant to a plan
10 described in sections 453 and 454 of the Social Security
11 Act, which has been approved by the secretary of health
12 and human services under Part D, Title IV of the Social
13 Security Act.

14 (2) The requesting agency shall agree that such
15 information is to be used only for the purpose of
16 establishing and collecting child support obligations
17 from, and locating, individuals owing such obligations
18 which are being enforced pursuant to a plan described
19 in sections 453 and 454 of the Social Security Act which
20 has been approved by the secretary of health and human
21 services under Part D, Title IV of the Social Security
22 Act.

23 (3) The information shall not be released unless the

24 requesting agency agrees to reimburse the costs
25 involved for furnishing such information.

26 (4) In addition to the requirements of this section, all
27 other requirements with respect to confidentiality of
28 information obtained in the administration of this
29 chapter and the sanctions imposed on improper disclosure shall apply to the use of such information by
30 officers and employees of child support agencies.
31

§21A-10-21. Recovery of benefits paid through error; limitation.

1 A person who, by reason of error, irrespective of the
2 nature of said error, has received a sum as a benefit
3 under this chapter, shall either have such sum deducted
4 from a future benefit payable to him or shall repay to
5 the commissioner the amount which he has received.
6 Collection shall be made in the same manner as
7 collection of past due payment: *Provided*, That such
8 collection or deduction of benefits shall be barred after
9 the expiration of two years.

§21A-10-22. Disclosure of information to department of housing and urban development.

1 (1) The department of employment security shall
2 disclose, upon request, to officers and employees of the
3 department of housing and urban development and to
4 representatives of public housing agencies, any wage
5 information with respect to an identified individual
6 which is contained in its records. The term "public
7 housing agencies" means any agency described in
8 section 3(b)(6) of the United States Housing Act of 1937.

9 (2) The requesting agency shall agree that such
10 information is to be used only for the purpose of
11 determining an individual's eligibility for benefits, or
12 the amount of benefits under any housing assistance
13 program of the department of housing and urban
14 development.

15 (3) The information shall not be released unless the
16 requesting agency agrees to reimburse the costs
17 involved for furnishing such information.

18 (4) In addition to the requirements of this section, all
19 other requirements with respect to confidentiality of
20 information obtained in the administration of this
21 chapter and the sanctions imposed on improper disclosure shall apply to the use of such information by
22 officers and employees of any public housing agency or
23 the department of housing and urban development.
24

CHAPTER 203

(S. B. 40—By Senator Tucker, Mr. President)

[Passed March 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred six, article three, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the definition of sum certain.

Be it enacted by the Legislature of West Virginia:

That section one hundred six, article three, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. COMMERCIAL PAPER.

PART 1. SHORT TITLE, FORM AND INTERPRETATION.

§46-3-106. Sum certain.

- 1 (1) The sum payable is a sum certain even though it
2 is to be paid:
 - 3 (a) With stated interest or by stated installments; or
 - 4 (b) With stated different rates of interest before and
5 after default or a specified date; or
 - 6 (c) With a stated discount or addition if paid before
7 or after the date fixed for payment; or
 - 8 (d) With exchange or less exchange, whether at a
9 fixed rate or at the current rate; or
 - 10 (e) With costs of collection or an attorney's fee or both
12 upon default; or

- 12 (f) With a variable interest rate; or
13 (g) With the current interest rate; or
14 (h) With a bank interest rate: *Provided*, That the name
15 and location of the bank are stated on the instrument.
16 (2) Nothing in this section shall validate any term
17 which is otherwise illegal.

CHAPTER 204

(Com. Sub. for S. B. 41—By Senator Tucker, Mr. President)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four hundred one and four hundred seven, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article one, chapter fifty-nine of said code, all relating to uniform commercial code; secured transactions; redefining the place of filing to perfect security interests; raising filing fees; establishment of an account to maintain the uniform commercial code program; and creation of rule and fee setting authority of the secretary of state.

Be it enacted by the Legislature of West Virginia:

That sections four hundred one and four hundred seven, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section two, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

Chapter

46. Uniform Commercial Code.

59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

**ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS
AND CHATTEL PAPERS.**

§46-9-401. Place of filing; erroneous filing; removal of collateral.

§46-9-407. Information from filing officer; central indexing system for recording security interest in farm products; contents.

§46-9-401. Place of filing; erroneous filing; removal of collateral.

1 (1) The proper place to file in order to perfect a
2 security interest is as follows:

3 (a) When the collateral is consumer goods, then in the
4 office of the secretary of state and in the office of the
5 clerk of the county commission of the debtor's residence
6 or if the debtor is not a resident of this state then in
7 the office of the clerk of the county commission where
8 the goods are kept;

9 (b) When the collateral is timber to be cut or is
10 minerals or the like (including oil and gas) or accounts
11 subject to the provisions of subsection five, section one
12 hundred three of this article, or when the financing
13 statement is filed as a fixture filing subject to the
14 provisions of section three hundred thirteen of this
15 article, and the collateral is goods which are or are to
16 become fixtures, then in the office where a mortgage on
17 the real estate would be filed or recorded;

18 (c) In all other cases, in the office of the secretary of
19 state.

20 (2) A filing which is made in good faith in an
21 improper place or not in all of the places required by
22 this section is nevertheless effective with regard to any
23 collateral as to which the filing complied with the
24 requirements of this article and is also effective with
25 regard to collateral covered by the financing statement
26 against any person who has knowledge of the contents
27 of such financing statement.

28 (3) A filing which is made in the proper county
29 continues effective after a change to another county of
30 the debtor's residence or place of business or the location
31 of the collateral, whichever controlled the original filing.

32 A change in the use of the collateral does not impair the
33 effectiveness of the original filing.

34 (4) The rules stated in section one hundred three of
35 this article determine whether filing is necessary in this
36 state.

37 (5) Notwithstanding the preceding subsections, and
38 subject to the provisions of subsection three, section
39 three hundred two of this article, the proper place to file
40 in order to perfect a security interest in collateral,
41 including fixtures, of a transmitting utility is the office
42 of the secretary of state. This filing constitutes a fixture
43 filing as to the collateral described therein which is or
44 is to become fixtures.

45 (6) For the purposes of this section, the residence of
46 an organization is its place of business if it has one or
47 its chief executive office if it has more than one place
48 of business.

§46-9-407. Information from filing officer; central indexing system for recording security interest in farm products; contents.

1 (1) If the person filing any financing statement,
2 termination statement, statement of assignment, or
3 statement of release, furnishes the filing officer a copy
4 thereof, the filing officer shall upon request note upon
5 the copy the file number and date and hour of the filing
6 of the original and deliver or send the copy to such
7 person.

8 (2) Upon request of any person, the secretary of state
9 shall issue his certificate showing whether there is on
10 file in his office on the date and hour stated therein, any
11 presently effective financing statement naming a
12 particular debtor and any statement of assignment
13 thereof and if there is, giving the date and hour of filing
14 of each such statement and the names and addresses of
15 each secured party therein. The uniform fee for such a
16 certificate shall be three dollars if the request for the
17 certificate is in the standard form prescribed by the
18 secretary of state and otherwise shall be five dollars plus
19 fifty cents for each financing statement and for each

20 statement of assignment reported therein. Upon request
21 the filing officer shall furnish a copy of any filed
22 financing statement or statement of assignment for a
23 uniform fee of fifty cents per page.

24 (3) The secretary of state shall develop and implement
25 a central indexing system containing the information
26 filed with his office pursuant to subsection four, section
27 three hundred seven of this article. Under this system,
28 the secretary shall record the date and time of filing and
29 compile the information into a master list organized
30 according to farm products. The list shall be organized
31 within each farm product category in alphabetical order
32 according to the last name of the borrower, or in the
33 case of borrowers doing business other than as individ-
34 uals, the first word in the name of such borrower in
35 numerical order according to the social security or
36 taxpayer identification number of the borrower, geogra-
37 phically by county and by crop year. The master list
38 shall also contain the name and address of the secured
39 party, the name and address of the borrower, a
40 description of the farm products, including amount
41 where applicable, subject to the security interest, and a
42 reasonable description of the real estate, including the
43 county where or upon which the farm products are
44 located.

45 (4) The secretary of state shall maintain a list of all
46 buyers of farm products, commission merchants and
47 selling agents who register with the secretary of state
48 indicating an interest in receiving the lists described in
49 subsection five of this section.

50 (5) The secretary of state shall distribute on a regular
51 basis as determined by the secretary of state to each
52 buyer, commission merchant and selling agent regis-
53 tered under subsection four, a copy in written or printed
54 form of those portions of the master list which the buyer,
55 commission merchant or selling agent has indicated an
56 interest in receiving.

57 (6) Upon the request of any person, the secretary of
58 state shall provide within twenty-four hours an oral
59 confirmation of the filing of the form described in

60 subsection four, section three hundred seven of this
61 article, followed by a written confirmation.

62 (7) All fees and moneys collected by the secretary of
63 state pursuant to the provisions of this article shall be
64 deposited by the secretary of state in a separate fund
65 in the state treasury and shall be expended solely for
66 the purposes of this article, unless otherwise provided
67 by appropriation or other action of the Legislature.

68 (8) The secretary of state shall, pursuant to the
69 provisions of article three, chapter twenty-nine-a of this
70 code, promulgate rules and set fees, not otherwise
71 provided for by general law, to carry out the duties
72 associated with this article.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by secretary of state.

1	Except as may be otherwise provided in article one,	
2	chapter thirty-one of this code, the secretary of state	
3	shall charge for services rendered in his office the	
4	following fees to be paid by the person to whom the	
5	service is rendered at the time it is done:	
6	For each certificate of incorporation or copy	
7	thereof, including restatements of any such	
8	certificates issued on new agreements, and/	
9	or consolidations or all certificates of merger	
10	or consolidation or certificates authorizing a	
11	foreign corporation to do business within this	
12	state	\$10.00
13	For each certified copy of certificate of incorpo-	
14	ration, not to exceed ten pages.....	10.00
15	If such copy contains in excess of ten pages, for	
16	each additional page20
17	For filing and recording a trademark.....	5.00
18	For each certificate of change of name, of	
19	increase or decrease of authorized capital	
20	stock, of change of principal office, or of	
21	amendment to certificate of incorporation.....	5.00

22	For recording a power of attorney and certifi-	
23	cate thereof	3.00
24	For any other certificate, whether required by	
25	law or made at the request of any person	5.00
26	The foregoing fees shall include the tax on the	
27	great seal or the less seal impressed on any	
28	such document, as well as the filing, record-	
29	ing and indexing of the same.	
30	For endorsing and filing reports of corpora-	
31	tions, and all other papers, which shall	
32	include the indexing of the same, for each	
33	report or paper filed	1.00
34	For any search, not less than	1.00
35	For searches of more than one hour, for each	
36	hour or fraction thereof consumed in making	
37	such search	5.00
38	The cost of the search shall be in addition to	
39	the cost of any certificate issued pursuant	
40	thereto or based thereon.	
41	For entering statement of satisfaction	
42	of conditional sale contract	1.00
43	For filing each financing, continuation or ter-	
44	mination statement or other statement or	
45	writing permitted to be filed under chapter	
46	forty-six of the code	3.00
47	For recording any paper for which no specific	
48	fee is prescribed	1.00
49	Or at the rate, for each one hundred words	
50	recorded, of20
51	For issuing commission to a notary public, or to	
52	a commissioner of deeds, which shall include	
53	the tax on the state seal thereon and other	
54	charges	5.00
55	For a testimonial	1.50
56	For a copy of any paper, if one sheet	1.00

57	For each sheet of copy after the first75
58	For issuing a commission to a commissioner in	
59	any other state	5.00
60	For any other work or service not herein	
61	enumerated, such fee as may be elsewhere	
62	prescribed.	

CHAPTER 205

(Com. Sub. for S. B. 509—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter seventeen-e, establishing the Uniform Commercial Driver's License Act; definitions; setting forth limitations on the number of commercial driver's licenses; providing for notification by the driver; setting forth employer responsibilities; requiring a commercial driver's license; establishing exemptions to the commercial driver's license requirements; setting commercial driver license qualification standards; providing for third party testing; indemnification of driver examiners; waiver of skills test; limitations on issuance of license; establishing a commercial driver's instruction permit; setting forth the application requirements and information needed for a commercial driver's license; providing for classifications, endorsements and restrictions; establishing an applicant record check; providing for the notification of license issuance; establishing expiration of license and license renewal procedures; establishing disqualification offenses and cancellation of a commercial motor vehicle license; prohibiting a commercial driver from operating with any alcohol in their system; establishing implied consent requirements for commercial motor vehicle drivers; providing for notification of traffic convictions; requiring driving record information to be furnished;

providing for rule-making authority; providing for authority to enter agreements; providing for reciprocity; setting forth a severability and savings clause; establishing effective dates; providing for funding for the commercial driver's license, providing for fees and establishing a special revolving fund; providing enforcement; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new chapter, designated chapter seventeen-e, to read as follows:

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

- §17E-1-1. Short title.
- §17E-1-2. Statement of intent and purpose.
- §17E-1-3. Definitions.
- §17E-1-4. Limitation on number of driver's licenses.
- §17E-1-5. Notification required by driver.
- §17E-1-6. Employer responsibilities.
- §17E-1-7. Commercial driver's license required.
- §17E-1-8. Exemptions to the commercial driver's license requirements.
- §17E-1-9. Commercial driver license qualification standards.
- §17E-1-10. Application for commercial driver's license.
- §17E-1-11. Commercial driver's license.
- §17E-1-12. Classifications, endorsements and restrictions.
- §17E-1-13. Disqualification and cancellation.
- §17E-1-14. Commercial drivers prohibited from operating with any alcohol in system.
- §17E-1-15. Implied consent requirements for commercial motor vehicles drivers.
- §17E-1-16. Notification of traffic convictions.
- §17E-1-17. Driving record information to be furnished.
- §17E-1-18. Rule-making authority.
- §17E-1-19. Authority to enter agreements.
- §17E-1-20. Reciprocity.
- §17E-1-21. Severability and savings clause.
- §17E-1-22. Effective dates.
- §17E-1-23. Funding for the commercial driver's license fees.
- §17E-1-24. Enforcement.
- §17E-1-25. Penalties.

§17E-1-1. Short title.

- 1 This article may be cited as the "Uniform Commercial
- 2 Driver's License Act."

§17E-1-2. Statement of intent and purpose.

1 The purpose of this article is to implement the federal
2 commercial motor vehicle safety act of 1986 (Title XII
3 of Public Law 99570) and reduce or prevent commercial
4 motor vehicle accidents, fatalities and injuries by:

5 (a) Permitting commercial drivers to hold only one
6 license;

7 (b) Disqualifying commercial drivers who have
8 committed certain serious traffic offenses; and

9 (c) Strengthening licensing and testing standards.

10 This article is a remedial law and shall be liberally
11 construed to promote the public health, safety and
12 welfare. Where this article is silent, the general driver
13 licensing provisions apply.

§17E-1-3. Definitions.

1 Notwithstanding any other provision of this code, the
2 following definitions apply to this article:

3 "Alcohol" means:

4 (a) Any substance containing any form of alcohol,
5 including, but not limited to, ethanol, methanol,
6 propanol and isopropanol;

7 (b) Beer, ale, port or stout and other similar fer-
8 mented beverages (including sake or similar pro-
9 ducts) of any name or description containing one half of
10 one percent or more of alcohol by volume, brewed or
11 produced from malt, wholly or in part, or from any
12 substitute therefor;

13 (c) Distilled spirits or that substance known as ethyl
14 alcohol, ethanol, or spirits of wine in any form (including
15 all dilutions and mixtures thereof from whatever source
16 or by whatever process produced); or

17 (d) Wine of not less than one half of one percent of
18 alcohol by volume.

19 "Alcohol concentration" means:

20 (a) The number of grams of alcohol per one hundred
21 milliliters of blood; or

22 (b) The number of grams of alcohol per two hundred
23 ten liters of breath; or

24 (c) The number of grams of alcohol per sixty-seven
25 milliliters of urine.

26 "Commercial driver license" means a license issued in
27 accordance with the requirements of this article to an
28 individual which authorizes the individual to drive a
29 class of commercial motor vehicle.

30 "Commercial driver license information system" is the
31 information system established pursuant to the federal
32 commercial motor vehicle safety act to serve as a
33 clearinghouse for locating information related to the
34 licensing and identification of commercial motor vehicle
35 drivers.

36 "Commercial driver instruction permit" means a
37 permit issued pursuant to subsection (e), section nine of
38 this article.

39 "Commercial motor vehicle" means a motor vehicle
40 designed or used to transport passengers or property:

41 (a) If the vehicle has a gross vehicle weight rating as
42 determined by federal regulation;

43 (b) If the vehicle is designed to transport sixteen or
44 more passengers, including the driver; or

45 (c) If the vehicle is transporting hazardous materials
46 and is required to be placarded in accordance with 49
47 C.F.R. part 172, sub-part F.

48 "Commissioner" means the commissioner of motor
49 vehicles of this state.

50 "Controlled substance" means any substance so
51 classified under the provisions of chapter sixty-a of this
52 code (uniform controlled substances act) and includes
53 all substances listed on Schedules I through V, article
54 two of said chapter sixty-a, as they may be revised from
55 time to time.

56 "Conviction" means the final judgment in a judicial or
57 administrative proceeding or a verdict or finding of
58 guilty, a plea of guilty, a plea of nolo contendere, an
59 implied admission of guilt or a forfeiture of bond or
60 collateral upon a charge of a disqualifying offense, as
61 a result of proceedings upon any violation of the
62 requirement of this article.

63 "Department" means the department of motor
64 vehicles.

65 "Disqualification" means a prohibition against driving
66 a commercial motor vehicle.

67 "Drive" means to drive, operate or be in physical
68 control of a motor vehicle in any place open to the
69 general public for purposes of vehicular traffic. For
70 purposes of sections twelve, thirteen and fourteen of this
71 article "drive" includes operation or physical control of
72 a motor vehicle anywhere in this state.

73 "Driver" means any person who drives, operates or is
74 in physical control of a commercial motor vehicle, in any
75 place open to the general public for purposes of
76 vehicular traffic, or who is required to hold a commer-
77 cial driver license.

78 "Driver license" means a license issued by a state to
79 an individual which authorizes the individual to drive
80 a motor vehicle of a specific class.

81 "Employee" means a person who is employed by an
82 employer to drive a commercial motor vehicle, including
83 independent contractors. An employee who is employed
84 by himself or herself as a commercial motor vehicle
85 driver must comply with both the requirements of this
86 article pertaining to employees and employers.

87 "Employer" means any person, including the United
88 States, a state, or a political subdivision of a state, who
89 owns or leases a commercial motor vehicle, or assigns
90 a person to drive a commercial motor vehicle.

91 "Farm vehicle" includes a motor vehicle or combina-
92 tion vehicle registered to the farm owner or entity
93 operating the farm and used exclusively in the transpor-

94 tation of agricultural or horticultural products, lives-
95 tock, poultry and dairy products from the farm or
96 orchard on which they are raised or produced to
97 markets, processing plants, packing houses, canneries,
98 railway shipping points and cold storage plants and in
99 the transportation of agricultural or horticultural
100 supplies and machinery to such farms or orchards to be
101 used thereon.

102 "Farmer" includes, but is not limited to, owner,
103 tenant, lessee, occupant or person in control of the
104 premises used substantially for agricultural or horticultural
105 pursuits, who is at least eighteen years of age with
106 two years licensed driving experience.

107 "Farmer vehicle driver" means the person employed
108 and designated by the "farmer" to drive a "farm vehicle"
109 as long as driving is not his sole or principal function
110 on the farm, who is at least eighteen years of age with
111 two years licensed driving experience.

112 "Gross vehicle weight rating" means the value
113 specified by the manufacturer as the maximum loaded
114 weight of a single or a combination (articulated) vehicle,
115 or registered gross weight, whichever is greater. The
116 gross vehicle weight rating of a combination (articulated)
117 vehicle (commonly referred to as the "gross
118 combination weight rating") is the gross vehicle weight
119 rating of the power unit plus the gross vehicle weight
120 rating of the towed unit or units.

121 "Hazardous materials" has the meaning as that found
122 in Section 103 of the Hazardous Materials Transportation
123 Act (49 App. U.S.C. 1801 et seq.).

124 "Motor vehicle" means every vehicle which is self-
125 propelled, and every vehicle which is propelled by
126 electric power obtained from overhead trolley wires but
127 not operated upon rails.

128 "Out-of-service order" means a temporary prohibition
129 against driving a commercial motor vehicle.

130 "Serious traffic violation" means:

131 (a) Operating a motor vehicle under the influence of

132 alcohol or a controlled substance in violation of the
133 provisions of section two, article five, chapter seventeen-
134 c of this code;

135 (b) Failure to stop and render aid and provide
136 required information after involvement in a motor
137 vehicle accident resulting in death, injury or property
138 damage, as provided in section five, article three,
139 chapter seventeen-b and sections one through five,
140 inclusive, article four, chapter seventeen-c of this code;

141 (c) A felony in the commission of which a motor
142 vehicle is used; as stated in subsection (2), section five,
143 article three, chapter seventeen-b of this code;

144 (d) Excessive speeding defined as fifteen miles per
145 hour in excess of all posted limits;

146 (e) Reckless driving as defined in section three, article
147 five, chapter seventeen-c of this code including erratic
148 lane changes and following the vehicle ahead too closely;

149 (f) A violation of state or local law relating to motor
150 vehicle traffic control (other than a parking violation)
151 arising in connection with a fatal traffic accident.
152 Vehicle weight and vehicle defects are excluded as
153 serious traffic violations;

154 (g) Violation of an out-of-service order; or

155 (h) Any other serious violations as may be determined
156 by the U. S. Secretary of Transportation.

157 "State" means a state of the United States and the
158 District of Columbia.

159 "At fault traffic accident" means for the purposes of
160 waiving the road test, a determination, by the official
161 filing the accident report, of fault as evidenced by an
162 indication of contributing circumstances in the accident
163 report.

§17E-1-4. Limitation on number of driver's licenses.

1 No person who drives a commercial motor vehicle
2 may have more than one driver license at one time
3 except during the ten-day period beginning on the date
4 the person is issued a driver's license.

3 except during the ten-day period beginning on the date
4 the person is issued a driver's license.

§17E-1-5. Notification required by driver.

1 (a) *Notification of convictions.*

2 (1) *To state.*—Any driver of a commercial motor
3 vehicle holding a driver's license issued by this state,
4 who is convicted of violating any state law or local
5 ordinance relating to motor vehicle traffic control, in
6 any other state or federal, provincial, territorial or
7 municipal laws of Canada, other than parking viola-
8 tions, shall notify the West Virginia department of
9 motor vehicles in the manner specified by the commis-
10 sioner within thirty days of the date of conviction.

11 (2) *To employers.*—Any driver of a commercial motor
12 vehicle holding a driver's license issued by this state,
13 who is convicted of violating any state law or local
14 ordinance relating to motor vehicle traffic control in this
15 state or any other state or federal provincial, territorial
16 or municipal laws of Canada, other than parking
17 violations, must notify his or her employer in writing of
18 the conviction within thirty days of the date of
19 conviction.

20 (b) *Notification of suspensions, revocations, cancella-*
21 *tions and expiration.*—Each driver whose driver's
22 license is suspended, revoked, canceled, or expired, by
23 any state, who loses the privilege to drive a commercial
24 motor vehicle in any state for any period, or who is
25 disqualified from driving a commercial motor vehicle
26 for any period, must notify his or her employer of that
27 fact before the end of the business day following the day
28 the driver received notice of that fact.

29 (c) *Notification of previous employment.*—Each person
30 who applies to be a commercial motor vehicle driver
31 must provide the employer, at the time of the applica-
32 tion, with the following information for the ten years
33 preceding the date of application:

34 (1) A list of the names and addresses of the applicant's
35 previous employers for which the applicant was a driver
36 of a commercial motor vehicle;

37 (2) The dates between which the applicant drove for
38 each employer; and

39 (3) The reason for leaving that employer.

40 The applicant must certify that all information
41 furnished is true and complete. An employer may
42 require an applicant to provide additional information.

§17E-1-6. Employer responsibilities.

1 (a) Each employer must require the applicant to
2 provide the information specified in section five of this
3 article.

4 (b) No employer may knowingly allow, permit, or
5 authorize a driver to drive a commercial motor vehicle
6 during any period:

7 (1) In which the driver has a driver's license sus-
8 pended, revoked, or canceled by a state; has lost the
9 privilege to drive a commercial motor vehicle in a state,
10 or has been disqualified from driving a commercial
11 motor vehicle; or

12 (2) In which the driver has more than one driver's
13 license at one time except during the ten-day period
14 beginning on the date the employee is issued a driver's
15 license.

§17E-1-7. Commercial driver's license required.

1 (a) On or after the first day of April, one thousand
2 nine hundred ninety-two, except when driving under a
3 commercial driver's instruction permit accompanied by
4 the holder of a commercial driver's license valid for the
5 vehicle being driven, no person may drive a commercial
6 motor vehicle unless the person holds a commercial
7 driver's license and applicable endorsements valid for
8 the vehicle they are driving.

9 (b) No person may drive a commercial motor vehicle
10 while their driving privilege is suspended, revoked,
11 canceled, or expired, while subject to a disqualification,
12 or in violation of an out-of-service order.

13 (c) Drivers of a commercial motor vehicle must have
14 a commercial driver's license in their possession at all
15 times while driving.

§17E-1-8. Exemptions to the commercial driver's license requirements.

1 (a) *Farmers*.—Bona fide farmers or farm vehicle
2 drivers, as defined, operating a vehicle otherwise
3 covered by the commercial driver's license requirements
4 may be exempted from the provisions of this article only
5 if the vehicle used is:

6 (1) Driven by a farmer or farm vehicle driver;

7 (2) Used only to transport either agricultural pro-
8 ducts, farm machinery, farm supplies, to or from a
9 farm;

10 (3) Not used in the operation of a common or contract
11 motor carrier; and

12 (4) Used within one hundred fifty miles of the
13 qualifying farm.

14 Farmers who wish to be exempted from the commer-
15 cial driver's license requirements must apply to the
16 department of motor vehicles for a certificate of
17 exemption.

18 (b) *Military personnel*.—Military personnel, including
19 the national guard and reserve, will be exempt from the
20 provision of this article, only:

21 (1) When in uniform; and

22 (2) Operating equipment owned by the United States
23 department of defense, except during declared emergen-
24 cies or disaster situations; and

25 (3) On duty; and

26 (4) In possession of a valid classified military driver's
27 license for the class of vehicle being driven.

28 (c) *Fire fighting and rescue equipment*.—Operators of
29 vehicles authorized to hold an "authorized emergency
30 vehicle permit" for use of red signal lights only are
31 exempt from the provision of this article while the
32 "authorized emergency vehicle permit" is in force.
33 Vehicles in this class include, but are not limited to, fire
34 fighters and rescue equipment:

35 (1) Owned and operated by state, county and munic-
36 ipal fire departments.

37 (2) Owned and operated by state, county and munic-
38 ipal civil defense organizations.

39 (3) Owned and operated by a manufacturer engaged
40 in a type of business that requires fire fighter equip-
41 ment to protect the safety of their plants and its
42 employees.

43 (4) Owned and operated by volunteer fire
44 departments.

45 (d) The Commercial Motor Vehicles Safety Act of
46 1986 exempts vehicles used exclusively for personal use
47 such as recreation vehicles and rental trucks used only
48 to transport the driver's personal or household property.

§17E-1.9. Commercial driver license qualification standards.

1 (a) On or after the first day of July, one thousand nine
2 hundred eighty-nine, the conversion process will phase
3 out the existing West Virginia chauffeur's license which
4 shall expire by the first day of April, one thousand nine
5 hundred ninety-two. At the expiration of a chauffeur's
6 license between the first day of July, one thousand nine
7 hundred eighty-nine, and the first day of April, one
8 thousand nine hundred ninety-two, an individual must
9 either qualify for a commercial driver's license or renew
10 with an operator's license. Anyone holding an operator's
11 license on the first day of July, one thousand nine
12 hundred eighty-nine, who either drives a commercial
13 motor vehicle or expects to drive a commercial motor
14 vehicle must qualify for a commercial driver's license
15 by the first day of April, one thousand nine hundred
16 ninety-two.

17 Those who qualify for a commercial driver's license
18 after the first day of July, one thousand nine hundred
19 eighty-nine, will be issued a provisional commercial
20 driver's license. The provisional commercial driver's
21 license will be valid until the driver's history record has
22 been checked and recorded with the national commer-

23 cial driver's license information system. If the record
24 checks indicate no disqualifying problem, the qualified
25 driver will be issued a full commercial driver's license
26 at no additional fee. All provisional commercial driver
27 licenses will expire no later than the first day of April,
28 one thousand nine hundred ninety-two.

29 (b) (1) *General.*—No person may be issued a commer-
30 cial driver's license unless that person is a resident of
31 this state and has passed a knowledge and skills test for
32 driving a commercial motor vehicle which complies
33 with minimum federal standards established by federal
34 regulations enumerated in 49 C.F.R. part 383, sub-parts
35 G and H, and has satisfied all other requirements of the
36 Federal Commercial Motor Vehicle Safety Act in
37 addition to other requirements imposed by state law or
38 federal regulations. The tests will be administered by
39 the department of public safety according to rules
40 promulgated by the commissioner.

41 (2) *Third party testing.*—The commissioner may
42 authorize a person, including an agency of this or
43 another state, an employer, private individual or
44 institution, department, agency or instrumentality of
45 local government, to administer the skills test specified
46 by this section: *Provided*, That (i) the test is the same
47 which would otherwise be administered by the state and
48 (ii) the party has entered into an agreement with the
49 state which complies with the requirements of 49 C.F.R.
50 part 383.75.

51 (3) *Indemnification of driver examiners.*—No person
52 who has been officially trained and certified by the state
53 as a driver examiner, who administers any such driving
54 test, and no other person, firm or corporation by whom
55 or with which such person is employed or is in any way
56 associated, may be criminally liable for the administra-
57 tion of such tests, or civilly liable in damages to the
58 person tested or other persons or property unless for
59 gross negligence or willful or wanton injury.

60 (4) Monitoring of third party testing will be carried
61 out by the department of public safety according to rules
62 promulgated by the commissioner.

63 (c) *Waiver of skills test.*—The commissioner may
64 waive the skills test specified in this section for a
65 commercial driver license applicant who meets the
66 requirements of 49 C.F.R. part 383.77 and those
67 requirements specified by the commissioner.

68 (d) *Limitations on issuance of license.*—A commercial
69 driver's license or commercial driver's instruction
70 permit may not be issued to a person while the person
71 is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license
72 is suspended, revoked or canceled in any state; nor may
73 a commercial driver's license be issued by any other
74 state unless the person first surrenders all such licenses
75 to the department, which must be returned to the
76 issuing state(s) for cancellation.

78 (e) *Commercial driver's instruction permit.*—(1) A
79 commercial driver's instruction permit may be issued to
80 an individual who holds a valid operator or Class "D"
81 driver license who has passed the vision and written
82 tests required for issuance of a commercial driver
83 license. (2) The commercial instruction permit may not
84 be issued for a period to exceed six months. Only one
85 renewal or reissuance may be granted within a two-year
86 period. The holder of a commercial driver's instruction
87 permit may drive a commercial motor vehicle on a
88 highway only when accompanied by the holder of a
89 commercial driver license valid for the type of vehicle
90 driven who occupies a seat beside the individual for the
91 purpose of giving instruction or testing. (3) A commercial driver's instruction permit may only be issued to an
92 individual who is at least eighteen years of age and has
93 held an operator's or junior operator's license for at least
94 two years. (4) The applicant for a commercial driver's
95 instruction permit must also be otherwise qualified to
96 hold a commercial driver's license.

§17E-1-10. Application for commercial driver's license.

1 (a) The application for a commercial driver's license
2 or commercial driver's instruction permit must include
3 at least the following:

- 4 (1) The full name and current mailing and residential
5 address of the person;
- 6 (2) A physical description of the person including sex,
7 height, weight, eye and hair color;
- 8 (3) Date of birth;
- 9 (4) The applicant's social security number;
- 10 (5) The person's signature;
- 11 (6) The person's color photograph;
- 12 (7) Certifications including those required by 49
13 C.F.R. part 383.71(a);
- 14 (8) Any other information required by the commis-
15 sioner; and
- 16 (9) A consent to release driving record information.
- 17 (b) When a licensee changes his or her name, mailing
18 address or residence, an application for a duplicate
19 license must be made.
- 20 (c) No person who has been a resident of this state for
21 thirty days or more may drive a commercial motor
22 vehicle under the authority of a commercial driver's
23 license issued by another jurisdiction.

§17E-1-11. Commercial driver's license.

- 1 The commercial driver's license must be marked
2 "commercial driver's license" or "CDL," and must be, to
3 the maximum extent practicable, tamper proof. It must
4 include, but not be limited to, the following information:
- 5 (a) The name and residential address of the person;
- 6 (b) The person's color photograph;
- 7 (c) A physical description of the person including sex,
8 height, weight, eye and hair color;
- 9 (d) Date of birth;
- 10 (e) The person's signature;
- 11 (f) The class or type of commercial motor vehicle or
12 vehicles which the person is authorized to drive together
13 with any endorsement(s) or restriction(s);

- 14 (g) The name of this state;
- 15 (h) The dates between which the license is valid; and
- 16 (i) Social security number.

§17E-1-12. Classifications, endorsements and restrictions.

1 Commercial driver's licenses may be issued, with the
2 following classifications, endorsements, and restrictions;
3 the holder of a valid commercial driver's license may
4 drive all vehicles in the class for which that license is
5 issued, and all lesser classes of vehicles and vehicles
6 which require an endorsement, unless the proper
7 endorsement appears on the license:

8 (a) *Classifications:*

9 Class A—Any combination of vehicles with a gross
10 vehicle weight rating of twenty-six thousand one pounds
11 or more, provided the gross vehicle weight rating of the
12 vehicle(s) being towed is in excess of ten thousand
13 pounds or is a semi-trailer or a trailer with two or more
14 axles.

15 Class B—Any single vehicle with a gross vehicle
16 weight rating of twenty-six thousand one pounds or
17 more, and any such vehicle towing a vehicle not in
18 excess of ten thousand pounds or is a semi-trailer or a
19 trailer with two or more axles.

20 Class C—Any single vehicle with a gross vehicle
21 weight rating of less than twenty-six thousand one
22 pounds or any such vehicle towing a vehicle with a gross
23 vehicle weight rating not in excess of ten thousand
24 pounds comprising:

25 (1) Vehicles designed to transport sixteen or more
26 passengers, including the driver; and

27 (2) Vehicles used in the transportation of hazardous
28 materials which requires the vehicle to be placarded
29 under 49 C.F.R., part 172, sub-part F.

30 Class D—Automobiles, pickup trucks, and all other
31 motor vehicles not specified in Class A, B, and C.

32 (b) *Endorsements and restrictions:*

33 "H" Authorizes the driver to drive a vehicle transport-
34 ing hazardous materials.

35 "K" Restricts the driver to vehicles not equipped with
36 airbrakes.

37 "T" Authorizes driving double and triple trailers.

38 "P" Authorizes driving vehicles carrying passengers.

39 "N" Authorizes driving tank vehicles.

40 "X" Represents a combination of hazardous materials
41 and tank vehicle endorsements.

42 (c) *Applicant record check.*—Before issuing a commer-
43 cial driver's license, the commissioner must obtain
44 driving record information through the commercial
45 driver's license information system, the national driver
46 register and from each state in which the person has
47 been licensed.

48 (d) *Notification of license issuance.*—Within ten days
49 after issuing a commercial driver's license, the commis-
50 sioner shall notify the commercial driver's license
51 information system of that fact, providing all informa-
52 tion required to ensure identification of the person.

53 (e) *Expiration of license.*—The commercial driver's
54 license shall expire four years from date of issuance.

55 Commercial driver's licenses held by any person in the
56 armed forces which expire while that person is on active
57 duty shall remain valid for thirty days from the date on
58 which that person reestablishes residence in West
59 Virginia.

60 Any person applying to renew a commercial driver's
61 license which has been expired for two years or more
62 must follow the procedures for an initial issuance of a
63 commercial driver's license, including the testing
64 provisions.

65 (f) *License renewal procedures.*—When applying for
66 renewal of a commercial driver's license, the applicant
67 must complete the application form, providing updated

68 information and required certifications. If the applicant
69 wishes to retain a hazardous materials endorsement, the
70 written test for a hazardous materials endorsement
71 must be taken and passed.

§17E-1-13. Disqualification and cancellation.

1 (a) *Disqualification offenses.*—On or after the first day
2 of April, one thousand nine hundred ninety-two, any
3 person is disqualified from driving a commercial motor
4 vehicle for a period of not less than one year if convicted
5 of a first violation of:

6 (1) Driving a commercial motor vehicle under the
7 influence of alcohol or a controlled substance;

8 (2) Driving a commercial motor vehicle while the
9 alcohol concentration of the person's blood or breath is
10 four hundredths or more;

11 (3) Leaving the scene of an accident involving a
12 commercial motor vehicle driven by the person;

13 (4) Using a commercial motor vehicle in the commis-
14 sion of any felony as defined in this article;

15 (5) Refusal to submit to a test to determine the
16 driver's alcohol concentration while driving a commer-
17 cial motor vehicle.

18 In addition, the conviction of any of the following
19 offenses as an operator of any vehicle is a disqualifica-
20 tion offense:

21 (1) Manslaughter or negligent homicide resulting
22 from the operation of a motor vehicle as defined under
23 the provisions of section five, article three, chapter
24 seventeen-b, and section one, article five, chapter
25 seventeen-c of this code;

26 (2) Driving while license is suspended or revoked, as
27 defined under the provisions of section three, article
28 four, chapter seventeen-b of this code;

29 (3) Perjury or making a false affidavit or statement
30 under oath to the department of motor vehicles, as
31 defined under the provisions of subsection (4), section
32 five, article three, and section two, article four, chapter
33 seventeen-b of this code.

34 If any of the above violations occurred while trans-
35 porting a hazardous material required to be placarded,
36 the person is disqualified for a period of not less than
37 three years.

38 (b) A person is disqualified for life if convicted of two
39 or more violations of any of the offenses specified in
40 subsection (a) of this section, or any combination of
41 those offenses, arising from two or more separate
42 incidents.

43 (c) The commissioner may issue rules establishing
44 guidelines, including conditions, under which a disqual-
45 ification for life under subsection (b) of this section may
46 be reduced to a period of not less than ten years.

47 (d) A person is disqualified from driving a commer-
48 cial motor vehicle for life who uses a commercial motor
49 vehicle in the commission of any felony involving the
50 manufacture, distribution or dispensing of a controlled
51 substance, or possession with intent to manufacture,
52 distribute or dispense a controlled substance.

53 (e) A person is disqualified from driving a commer-
54 cial motor vehicle for a period of not less than sixty days
55 if convicted of two serious traffic violations, or one
56 hundred twenty days if convicted of three serious
57 violations, committed in a commercial motor vehicle
58 arising from separate incidents occurring within a
59 three-year period.

60 (f) After suspending, revoking or cancelling a com-
61 mercial driver's license, the department shall update its
62 records to reflect that action within ten days.

**§17E-1-14. Commercial drivers prohibited from operat-
ing with any alcohol in system.**

1 (a) Notwithstanding any other provision of this
2 article, a person may not drive, operate or be in physical
3 control of a commercial motor vehicle while having any
4 measurable alcohol in his or her system.

5 (b) In addition to any other penalties provided by this
6 code, a person who drives, operates or is in physical

7 control of a commercial motor vehicle while having any
8 measurable alcohol in his or her system or who refuses
9 to take a preliminary breath test to determine their
10 alcohol content as provided by section fifteen of this
11 article must be placed out of service for twenty-four
12 hours.

§17E-1-15. Implied consent requirements for commercial motor vehicles drivers.

1 (a) A person who drives a commercial motor vehicle
2 within this state is deemed to have given consent,
3 subject to provisions of section four, article five, chapter
4 seventeen-c of this code, to take a test or tests of that
5 person's blood, breath or urine for the purpose of
6 determining that person's alcohol concentration, or the
7 presence of other drugs.

8 (b) A test or tests may be administered at the
9 direction of a law-enforcement officer, who after
10 stopping or detaining the commercial motor vehicle
11 driver, has reasonable cause to believe that driver was
12 driving a commercial motor vehicle while having
13 alcohol in his or her system.

14 (c) A person requested to submit to a test as provided
15 in subsection (a) of this section must be warned by the
16 law-enforcement officer requesting the test that a
17 refusal to submit to the test will result in that person
18 being disqualified from operating a commercial motor
19 vehicle under section fifteen of this article.

20 (d) If the person refuses testing, or submits to a test
21 which discloses an alcohol concentration of four hun-
22 dredths or more, that law-enforcement officer must
23 submit a sworn report to the department of motor
24 vehicles certifying that the test was requested pursuant
25 to subsection (a) of this section and that the person
26 refused to submit to testing, or submitted to a test which
27 disclosed an alcohol concentration of four hundredths or
28 more.

29 (e) Upon receipt of the sworn report of a law-
30 enforcement officer submitted under subsection (d) of
31 this section, the commissioner must disqualify the driver

32 from driving a commercial motor vehicle under section
33 fifteen of this article.

§17E-1-16. Notification of traffic convictions.

1 Within ten days after receiving a report of the
2 conviction of any holder of a commercial driver license
3 for any violation of state law or local ordinance relating
4 to motor vehicle traffic control, other than parking
5 violations, committed in a commercial motor vehicle, the
6 commissioner must notify the driver licensing authority
7 in the licensing state of the conviction and the United
8 States department of transportation, federal highway
9 administration, and the public service commission,
10 transportation division.

§17E-1-17. Driving record information to be furnished.

1 Notwithstanding any other provision of law to the
2 contrary, the commissioner must furnish full informa-
3 tion regarding the driving record of any person:

4 (a) To the driver license administrator of any other
5 state or province or territory of Canada requesting that
6 information;

7 (b) To any employer or prospective employer;

8 (c) To insurers upon request;

9 (d) To credit reporting organizations and for other
10 legitimate business transactions; or

11 (e) The driver himself.

§17E-1-18. Rule-making authority.

1 The commissioner shall adopt rules and regulations
2 necessary to carry out the provisions of this article.

§17E-1-19. Authority to enter agreements.

1 The commissioner may enter into or make agree-
2 ments, arrangements or declarations to carry out the
3 provisions of this chapter.

§17E-1-20. Reciprocity.

1 Notwithstanding any law to the contrary, a person
2 may drive a commercial motor vehicle if the person has

3 a commercial driver's license by any state in accordance
 4 with the minimum federal standards for the issuance of
 5 commercial motor vehicle driver licenses; if the license
 6 is not suspended, revoked or canceled; and if the person
 7 is not disqualified from driving a commercial motor
 8 vehicle, or subject to an "out-of-service" order.

§17E-1-21. Severability and savings clause.

1 The provisions of any chapter or parts of chapters of
 2 this code, which are inconsistent with the provisions of
 3 this chapter, are repealed to the extent of such incon-
 4 sistency.

§17E-1-22. Effective dates.

1 All provisions of this chapter are effective imme-
 2 diately on passage except:

3 (a) Section seven—the first day of April, one thousand
 4 nine hundred ninety-two.

5 (b) Section eight—the first day of July, one thousand
 6 nine hundred eighty-nine.

7 (c) Section nine—the first day of July, one thousand
 8 nine hundred eighty-nine.

9 (d) Section ten—the first day of July, one thousand
 10 nine hundred eighty-nine.

11 (e) Sections eleven, twelve, thirteen, fourteen—the
 12 first day of April, one thousand nine hundred ninety-
 13 two.

§17E-1-23. Funding for the commercial driver's license fees.

1 Each application for a commercial driver's license
 2 shall be accompanied by the fees hereafter provided and
 3 such fees shall be deposited in a special revolving fund
 4 for the operation by the department of its functions
 5 established by this chapter.

6 The fee for a commercial driver's license shall be
 7 established by the commissioner to cover all necessary
 8 costs for program administration. The fees for knowl-
 9 edge and road testing shall also be established by the

10 commissioner to cover all program costs projected to be
11 incurred by the department of motor vehicles and the
12 department of public safety. The commissioner of motor
13 vehicles is authorized and directed to transfer into a
14 special revolving fund under the control of the super-
15 intendent of the department of public safety such
16 amounts required by the department of public safety
17 and determined by the commissioner as necessary to
18 administer its responsibilities under this article.

§17E-1-24. Enforcement.

1 In addition to the officers of the department of public
2 safety, any police officer, or employee of the department
3 of highways designated by the commissioner of high-
4 ways as a weight enforcement officer, or any inspector
5 of the public service commission, motor carrier division,
6 may enforce the provisions of this article.

§17E-1-25. Penalties.

1 It is a misdemeanor for any person to violate any of
2 the provisions of this chapter unless such violation is by
3 this chapter or other law of this state declared to be a
4 felony.

5 Unless another penalty is provided in this chapter or
6 by the laws of this state, every person convicted of a
7 misdemeanor for the violation of any provisions of this
8 chapter shall be fined not less than one hundred dollars
9 nor more than one thousand dollars, or imprisoned for
10 not more than six months in the county jail, or both
11 fined and imprisoned, except that for the second
12 violation of section seven of this article and, upon
13 conviction thereof, the offender shall be fined not less
14 than five hundred dollars nor more than two thousand
15 dollars or imprisoned for not less than six months nor
16 more than nine months in the county jail, or both fined
17 and imprisoned. For the third or any subsequent
18 conviction for violation of section seven of this article,
19 upon conviction thereof, the offender shall be fined not
20 less than one thousand dollars nor more than two
21 thousand five hundred dollars, or imprisoned for not less
22 than nine months nor more than one year in the county
23 jail, or both fined and imprisoned.

CHAPTER 206

(H. B. 2003—By Delegates Love and Given)

[Passed March 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article ten, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enacting the uniform determination of death act; establishing standards for the determination of death; mandating uniform construction and application of the act; providing civil and criminal immunity for certain persons; and changing the short title from the uniform brain death act to the uniform determination of death act.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. UNIFORM DETERMINATION OF DEATH ACT.

§16-10-1. Determination of death.

§16-10-2. Uniformity of construction and application.

§16-10-3. Civil and criminal immunity.

§16-10-4. Short title.

§16-10-1. Determination of death.

- 1 An individual who has sustained either (1) irreversible
- 2 cessation of circulatory and respiratory functions or (2)
- 3 irreversible cessation of all functions of the entire brain,
- 4 including the brain stem, is dead. A determination of
- 5 death must be made in accordance with accepted
- 6 medical standards.

§16-10-2. Uniformity of construction and application.

- 1 This article shall be applied and construed to effec-
- 2 tuate its general purpose to make uniform the law with
- 3 respect to the subject of this article among states
- 4 enacting it.

§16-10-3. Civil and criminal immunity.

- 1 A physician or any other person authorized by law to

2 determine death who makes such determination in
3 accordance with section one of this article is not liable
4 for damages in any civil action or subject to prosecution
5 in any criminal proceeding for his acts or the acts of
6 others based on that determination. Any person who acts
7 in good faith in reliance on a determination of death is
8 not liable for damages in any civil action or subject to
9 prosecution in any criminal proceeding for such act.

§16-10-4. Short title.

1 This article may be cited as the "Uniform Determini-
2 nation of Death Act."

CHAPTER 207

(S. B. 302—By Senators Brackenrich, Parker and Felton)

[Passed April 5, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twenty-two, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five-a, article one; section two, article six; and section three, article eight, chapter sixty of said code, all relating to the permission of advertising of farm wineries; revising the definition of "farm winery" as inclusive of operating an offsite establishment and as exclusive of young implantations; providing permission for the holder of a farm winery license to sell wine to consumers at the winery and to other sellers without payment of a transport bond; relating to the permission and the regulation of the sale of West Virginia wine at fairs, festivals, restaurants and state stores; and providing for legislative rules.

Be it enacted by the Legislature of West Virginia:

That section seven, article twenty-two, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five-a, article one; section two, article six; and section three, article eight, chapter sixty of said code be amended and reenacted, all to read as follows:

Chapter**17. Roads and Highways.****60. State Control of Alcoholic Liquors.****CHAPTER 17. ROADS AND HIGHWAYS.****ARTICLE 22. OUTDOOR ADVERTISING.****§17-22-7. Exceptions to prohibited signs; standards for excepted signs.**

1 The provisions of section three of this article shall not
2 apply to the following: (a) Directional and other official
3 signs and notices required or authorized by law,
4 including, but not limited to, signs and notices pertain-
5 ing to natural wonders, farm wineries, scenic and
6 historical attractions, which such signs and notices shall
7 conform to standards respecting lighting, size, number,
8 spacing and such other appropriate requirements as
9 may be designated and specified by the secretary of
10 transportation of the United States: *Provided*, That the
11 commissioner of the department of highways shall not
12 establish any standards respecting lighting, size,
13 number, spacing and other appropriate requirements
14 which are stricter than such standards designated and
15 specified by the secretary of transportation of the
16 United States; (b) signs, displays, and devices advertis-
17 ing the sale or lease of property upon which they are
18 located; and (c) signs, displays, and devices advertising
19 activities conducted on the property on which they are
20 located, including markers of underground utility
21 facilities.

**CHAPTER 60. STATE CONTROL OF
ALCOHOLIC LIQUORS.****Article**

1. General Provisions.
6. Miscellaneous Provisions.
8. Sale of Wines.

ARTICLE 1. GENERAL PROVISIONS.**§60-1-5a. Farm wineries defined.**

1 For the purpose of this chapter: "Farm winery" means
2 an establishment where in any year fifty thousand
3 gallons or less of wine is manufactured exclusively by

4 natural fermentation from grapes, other fruit or honey,
5 with twenty-five percent of such raw products being
6 produced by the owner of such farm winery on the
7 premises of that establishment, and no more than
8 twenty-five percent of such produce originating from
9 any source outside this state: *Provided*, That a farm
10 winery may include one off-farm location: *Provided*,
11 *however*, That the owner of a farm winery may provide
12 to the commissioner evidence, accompanied by written
13 findings by the West Virginia agriculture commissioner
14 in support thereof, that the owner has planted on the
15 premises of the farm winery young nonbearing fruit
16 plants. The commissioner may grant permission for one
17 off-farm location in an amount equal to that reasonably
18 expected to be produced when the nonbearing fruit
19 plants planted on the farm winery come into full
20 production. The length of time of the permission to use
21 an off-farm location shall be determined by the commis-
22 sioner after consultation with the agriculture commis-
23 sioner.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-2. When lawful to manufacture and sell wine and cider.

- 1 The provisions of this chapter shall not prevent:
- 2 (1) A person from manufacturing wine at his resi-
3 dence for consumption at his residence as permitted by
4 section one of this article;
- 5 (2) A person from manufacturing and selling unfer-
6 mented cider;
- 7 (3) A person from manufacturing and selling cider
8 made from apples produced by him within this state, to
9 persons holding distillery licenses, but such manufac-
10 ture and sale shall be under the supervision and
11 regulation of the commissioner;
- 12 (4) A person from manufacturing and selling wine
13 made from fruit produced by him within this state to
14 persons holding winery licenses, but such manufacture
15 and sale shall be under the supervision and regulation
16 of the commissioner; and

17 (5) The holder of a farm winery license from selling
18 wine produced by it directly to consumers at the winery
19 and at one off-farm winery location or to any other
20 person who is licensed under this chapter to sell wine
21 either at wholesale or at retail: *Provided*, That the
22 winery may ship wines from the farm winery without
23 the bonding requirements of a transporter: *Provided*,
24 *however*, That notwithstanding any other provisions of
25 law to the contrary, an individual or licensee in a state
26 which affords the wineries of this state equal reciprocal
27 shipping privileges may ship for personal use and not
28 for resale not more than two cases of wine per month
29 to any adult resident in this state.

ARTICLE 8. SALE OF WINES.

§60-8-3. Licenses; fees; general restrictions.

1 (a) Except as to farm wineries as defined by section
2 five-a, article one of this chapter, no person may engage
3 in business in the capacity of a distributor, retailer or
4 private wine restaurant without first obtaining a license
5 from the commissioner, nor shall a person continue to
6 engage in any such activity after his license has expired,
7 been suspended or revoked. No person may be licensed
8 simultaneously as a distributor and a retailer, as a
9 distributor and a private wine restaurant, or as a
10 retailer and a private wine restaurant.

11 (b) The commissioner shall collect an annual fee for
12 licenses issued under this article, as follows:

13 (1) Twenty-five hundred dollars per year for a
14 distributor's license and each separate warehouse or
15 other facility from which a distributor sells, transfers
16 or delivers wine shall be separately licensed and there
17 shall be collected with respect to each such location the
18 annual license fee of twenty-five hundred dollars as
19 herein provided.

20 (2) One hundred fifty dollars per year for a retailer's
21 license.

22 (3) Fifty dollars per year for a wine tasting license.

23 (4) Fifty dollars for each sales representative of or
24 employed by a licensed distributor.

25 (5) Two hundred fifty dollars per year for a private
26 wine restaurant license, and each separate restaurant
27 from which a licensee sells wine shall be separately
28 licensed and there shall be collected with respect to each
29 such location the annual license fee of two hundred fifty
30 dollars as herein provided.

31 (c) The license period shall begin on the first day of
32 July of each year and end on the thirtieth day of June
33 of the following year, and if granted for a less period,
34 the same shall be computed semiannually in proportion
35 to the remainder of the fiscal year.

36 (d) No retailer may be licensed as a private club as
37 provided by article seven of this chapter.

38 (e) No retailer may be licensed as a Class A retail
39 dealer in nonintoxicating beer as provided by article
40 sixteen, chapter eleven of this code: *Provided*, That a
41 delicatessen which is a grocery store as defined in
42 section two of this article and which is licensed as a
43 Class A retail dealer in nonintoxicating beer, may be a
44 retailer under this article: *Provided, however*, That any
45 delicatessen licensed in both such capacities must
46 maintain average monthly sales exclusive of sales of
47 wine and nonintoxicating beer which exceed the average
48 monthly sales of nonintoxicating beer.

49 (f) A retailer under this article may also hold a wine
50 tasting license authorizing such retailer to serve
51 complimentary samples of wine in moderate quantities
52 for tasting. Such retailer shall organize a winetaster's
53 club, which has at least fifty duly elected or approved
54 dues paying members in good standing. Such club shall
55 meet on the retailer's premises not more than one time
56 per week and shall either meet at a time when the
57 premises are closed to the general public, or shall meet
58 in a separate segregated facility on the premises to
59 which the general public is not admitted. Attendance at
60 tastings shall be limited to duly elected or approved
61 dues paying members and their guests.

62 (g) A retailer who has more than one place of retail
63 business shall obtain a license for each separate retail
64 establishment. A retailer's license may be issued only to
65 the proprietor or owner of a bona fide grocery store or
66 wine specialty shop.

67 (h) The commissioner may issue a special license for
68 the retail sale of wine at any festival or fair which is
69 endorsed or sponsored by the governing body of a
70 municipality or a county commission. Such special
71 license shall be issued for a term of no longer than ten
72 consecutive days and the fee therefor shall be two
73 hundred fifty dollars regardless of the term of the
74 license unless the applicant is the manufacturer of said
75 wine on a farm winery as defined in section five-a,
76 article one of this chapter, in which event the fee shall
77 be twenty-five dollars. The application for such license
78 shall contain such information as the commissioner may
79 reasonably require and shall be submitted to the
80 commissioner at least thirty days prior to the first day
81 when wine is to be sold at such festival or fair. A farm
82 winery licensed under this subsection may exhibit,
83 conduct tastings, not to exceed a reasonable serving, and
84 may sell wine only for consumption off the premises of
85 such festival or fair. A special license issued other than
86 to a farm winery may be issued to a "wine club" as
87 defined hereinbelow. The festival or fair committee or
88 the governing body shall designate a person to organize
89 a club under a name which includes the name of the
90 festival or fair and the words "wine club." The license
91 shall be issued in the name of the wine club. A licensee
92 may not commence the sale of wine as provided for in
93 this subsection until the wine club has at least fifty dues
94 paying members who have been enrolled and to whom
95 membership cards have been issued. Thereafter, new
96 members may be enrolled and issued membership cards
97 at any time during the period for which the license is
98 issued. A wine club licensed under the provisions of this
99 subsection may sell wine only to its members, and in
100 portions not to exceed eight ounces per serving. Such
101 sales shall take place on premises or in an area cordoned
102 or segregated so as to be closed to the general public,
103 and the general public shall not be admitted to such

104 premises or area. A wine club licensee under the
105 provisions of this subsection shall be authorized to serve
106 complimentary samples of wine in moderate quantities
107 for tasting.

108 A license issued under the provisions of this subsection
109 and the licensee holding such license shall be subject to
110 all other provisions of this article and the rules,
111 regulations and orders of the commissioner relating to
112 such special license: *Provided*, That the commissioner
113 may by rule, regulation, or order provide for certain
114 waivers or exceptions with respect to such provisions,
115 rules, regulations, or orders as the circumstances of each
116 such festival or fair may require, including, without
117 limitation, the right to revoke or suspend any license
118 issued pursuant to this section prior to any notice or
119 hearing notwithstanding the provisions of section twelve
120 of this article: *Provided, however*, That under no
121 circumstances shall the provisions of subsections (c) or
122 (d), section twenty of this article be waived nor shall any
123 exception be granted with respect thereto.

124 A license issued under the provisions of this subsection
125 and the licensee holding such license shall not be subject
126 to the provisions of subsection (g) of this section.

127 (i) A license to sell wine granted to a private wine
128 restaurant under the provisions of this article entitles
129 the operator to sell and serve wine, for consumption on
130 the premises of the licensee, when such sale accompanies
131 the serving of food or a meal to its members and their
132 guests in accordance with the provisions of this article.
133 Such licensees are authorized to keep and maintain on
134 their premises a supply of wine in such quantities as
135 may be appropriate for the conduct of operations
136 thereof. Any sale of wine so made shall be subject to all
137 restrictions set forth in section twenty of this article. A
138 private wine restaurant may also be licensed as a Class
139 A retail dealer in nonintoxicating beer as provided by
140 article sixteen, chapter eleven of this code.

141 (j) With respect to subdivisions (h) and (i) of this
142 section, the commissioner shall promulgate rules and
143 regulations in regard to the form of the applications, the

144 suitability of both the applicant and location of the
145 licensed premises and such other rules and regulations
146 deemed necessary to carry the provisions of such
147 subsections into effect.

148 (k) The commissioner shall promulgate rules and
149 regulations in accordance with chapter twenty-nine-a to
150 allow restaurants to serve West Virginia wine with
151 meals, but not to sell the wine by the bottle. Each
152 restaurant so licensed shall be charged a fee less than
153 that charged for a wine license to a retail outlet, such
154 fees to be set forth in the aforementioned rules and
155 regulations promulgated pursuant to this subsection.

156 (l) The commissioner shall establish guidelines to
157 permit West Virginia wines to be sold in state stores.

158 (m) Farm wineries as defined in section one-a of this
159 article may advertise off premises as provided in section
160 seven, article twenty-two of chapter seventeen and in
161 any other media, including, but not limited to, news-
162 paper, radio, television, magazines and direct mail
163 solicitation.

CHAPTER 208

(H. B. 2672—By Delegates M. Burke and Rutledge)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to workers' compensation; disability and death benefits; providing that employees of the state and its political subdivisions may not simultaneously draw workers' compensation benefits and receive sick leave for the same period of time.

Be it enacted by the Legislature of West Virginia:

That section one, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

CHAPTER 23. WORKERS' COMPENSATION.**ARTICLE 4. DISABILITY AND DEATH BENEFITS.**

§23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis and other occupational diseases.

1 Subject to the provisions and limitations elsewhere in
2 this chapter set forth, the commissioner shall disburse
3 the workers' compensation fund to the employees of
4 employers subject to this chapter, which employees have
5 received personal injuries in the course of and resulting
6 from their covered employment or to the dependents, if
7 any, of such employees in case death has ensued,
8 according to the provisions hereinafter made; and also
9 for the expenses of the administration of this chapter,
10 as provided in section two, article one of this chapter:
11 *Provided, That in the case of any employees of the state*
12 *and its political subdivisions, including: counties;*
13 *municipalities; cities; towns; any separate corporation or*
14 *instrumentality established by one or more counties,*
15 *cities or towns as permitted by law; any corporation or*
16 *instrumentality supported in most part by counties,*
17 *cities, or towns; any public corporation charged by law*
18 *with the performance of a governmental function and*
19 *whose jurisdiction is coextensive with one or more*
20 *counties, cities or towns; any agency or organization*
21 *established by the department of mental health for the*
22 *provision of community health or mental retardation*
23 *services and which is supported in whole or in part by*
24 *state, county or municipal funds; board, agency,*
25 *commission, department or spending unit including any*
26 *agency created by rule of the supreme court of appeals,*
27 *who have received personal injuries in the course of and*
28 *resulting from their covered employment, such em-*
29 *ployees are ineligible to receive compensation while such*
30 *employees are at the same time and for the same reason*
31 *drawing sick leave benefits. Such state employees may*
32 *only use sick leave for non-job related absences consist-*
33 *ent with sick leave utilization, and may draw workers'*
34 *compensation benefits only where there is a job related*

35 injury. This proviso shall not apply to permanent
36 benefits: *Provided, however*, That such employees may
37 collect sick leave benefits until receiving temporary
38 total disability benefits. The division of personnel shall
39 promulgate rules pursuant to chapter twenty-nine-a of
40 this code relating to use of sick leave benefits by
41 employees receiving personal injuries in the course of
42 and resulting from covered employment: *Provided*
43 *further*, That in the event an employee is injured in the
44 course of and resulting from covered employment and
45 such injury results in lost time from work, and such
46 employee for whatever reason uses or obtains sick leave
47 benefits and subsequently receives temporary total
48 disability benefits for the same time period, such
49 employee may be restored sick leave time taken by him
50 or her as a result of the compensable injury by paying
51 to his or her employer the temporary total disability
52 benefits received or an amount equal to the temporary
53 total disability benefits received. Such employee shall be
54 restored sick leave time on a day for day basis which
55 corresponds to temporary total disability benefits paid
56 to the employer: *And provided further*, That since the
57 intent of this paragraph is to prevent an employee of the
58 state or any of its political subdivisions from collecting
59 both temporary total disability benefits and sick leave
60 benefits for the same time period, nothing herein may
61 be construed to prevent an employee of the state or any
62 of its political subdivisions from electing to receive
63 either sick leave benefits or temporary total disability
64 benefits but not both.

65 For the purposes of this chapter the terms "injury"
66 and "personal injury" shall include occupational pneu-
67 moconiosis and any other occupational disease, as
68 hereinafter defined, and the commissioner shall likewise
69 disburse the workers' compensation fund to the em-
70 ployees of such employers in whose employment such
71 employees have been exposed to the hazards of occupa-
72 tional pneumoconiosis or other occupational disease and
73 in this state have contracted occupational pneumoconi-
74 osis or other occupational disease, or have suffered a
75 perceptible aggravation of an existing pneumoconiosis
76 or other occupational disease, or to the dependents, if

77 any, of such employees, in case death has ensued,
78 according to the provisions hereinafter made: *Provided*,
79 That compensation shall not be payable for the disease
80 of occupational pneumoconiosis, or death resulting
81 therefrom, unless the employee has been exposed to the
82 hazards of occupational pneumoconiosis in the state of
83 West Virginia over a continuous period of not less than
84 two years during the ten years immediately preceding
85 the date of his last exposure to such hazards, or for any
86 five of the fifteen years immediately preceding the date
87 of such last exposure. An application for benefits on
88 account of occupational pneumoconiosis shall set forth
89 the name of the employer or employers and the time
90 worked for each, and the commissioner may allocate to
91 and divide any charges resulting from such claim
92 among the employers by whom the claimant was
93 employed for as much as sixty days during the period
94 of three years immediately preceding the date of last
95 exposure to the hazards of occupational pneumoconiosis.
96 The allocation shall be based upon the time and degree
97 of exposure with each employer.

98 For the purposes of this chapter disability or death
99 resulting from occupational pneumoconiosis, as defined
100 in the immediately succeeding sentence, shall be treated
101 and compensated as an injury by accident.

102 Occupational pneumoconiosis is a disease of the lungs
103 caused by the inhalation of minute particles of dust over
104 a period of time due to causes and conditions arising out
105 of and in the course of the employment. The term
106 "occupational pneumoconiosis" shall include, but shall
107 not be limited to, such diseases as silicosis, anthracosi-
108 lisis, coal worker's pneumoconiosis, commonly known
109 as black lung or miner's asthma, silico-tuberculosis
110 (silicosis accompanied by active tuberculosis of the
111 lungs), coal worker's pneumoconiosis accompanied by
112 active tuberculosis of the lungs, asbestosis, siderosis,
113 anthrax and any and all other dust diseases of the lungs
114 and conditions and diseases caused by occupational
115 pneumoconiosis which are not specifically designated
116 herein meeting the definition of occupational pneumo-
117 coniosis set forth in the immediately preceding sentence.

118 In determining the presence of occupational pneumo-
119 coniosis, X-ray evidence may be considered but shall not
120 be accorded greater weight than any other type of
121 evidence demonstrating occupational pneumoconiosis.

122 For the purposes of this chapter, occupational disease
123 means a disease incurred in the course of and resulting
124 from employment. No ordinary disease of life to which
125 the general public is exposed outside of the employment
126 shall be compensable except when it follows as an
127 incident of occupational disease as defined in this
128 chapter. Except in the case of occupational pneumoco-
129 niosis, a disease shall be deemed to have been incurred
130 in the course of or to have resulted from the employment
131 only if it is apparent to the rational mind, upon
132 consideration of all the circumstances (1) that there is
133 a direct causal connection between the conditions under
134 which work is performed and the occupational disease,
135 (2) that it can be seen to have followed as a natural
136 incident of the work as a result of the exposure
137 occasioned by the nature of the employment, (3) that it
138 can be fairly traced to the employment as the proximate
139 cause, (4) that it does not come from a hazard to which
140 workmen would have been equally exposed outside of
141 the employment, (5) that it is incidental to the character
142 of the business and not independent of the relation of
143 employer and employee, and (6) that it must appear to
144 have had its origin in a risk connected with the
145 employment and to have flowed from that source as a
146 natural consequence, though it need not have been
147 foreseen or expected before its contraction.

148 No award shall be made under the provisions of this
149 chapter for any occupational disease contracted prior to
150 the first day of July, one thousand nine hundred forty-
151 nine. An employee shall be deemed to have contracted
152 an occupational disease within the meaning of this
153 paragraph if the disease or condition has developed to
154 such an extent that it can be diagnosed as an occupa-
155 tional disease.

156 Claims for occupational disease as hereinbefore
157 defined, except occupational pneumoconiosis, shall be
158 processed in like manner as claims for all other personal
159 injuries.

CHAPTER 209

(S. B. 614—By Senator Dittmar)

[Passed April 7, 1989; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Calhoun County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the county an election to extend the additional county levy for emergency services in Calhoun County from between the seventh and twenty-eighth days of March until Thursday, the first day of June, one thousand nine hundred eighty-nine.

Be it enacted by the Legislature of West Virginia:

CALHOUN COUNTY COMMISSION MEETING AS A LEVYING BODY EXTENDED TO CONTINUE ADDITIONAL LEVY FOR EMERGENCY SERVICES.

§1. Extending time for Calhoun County commission to meet as levying body for election to continue additional levy for emergency services.

1 Notwithstanding the provisions of article eight,
2 chapter eleven of the code of West Virginia, one
3 thousand nine hundred thirty-one, as amended, to the
4 contrary, the county commission of Calhoun County is
5 hereby authorized to extend the time for its meeting as
6 a levying body and certifying its actions to the state tax
7 commissioner from between the seventh and twenty-
8 eighth days of March until Thursday, the first day of
9 June, one thousand nine hundred eighty-nine, for the
10 purpose of submitting to the voters of Calhoun County
11 the extension of the additional county levy for emer-
12 gency services in Calhoun County.

CHAPTER 210

(H. B. 2779—By Delegate Willison)

[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

AN ACT to authorize the transfer by the Doddridge County board of education of the land and buildings of the Krenn School or the St. Clara community building.

Be it enacted by the Legislature of West Virginia:

THE KRENN SCHOOL, ALSO KNOWN AS THE ST. CLARA COMMUNITY BUILDING.

§1. School board authorized to transfer Krenn School to Historical Society.

1 The school board of Doddridge County is hereby
2 authorized and empowered to convey to the Doddridge
3 County Historical Society for a nominal sum, the one-
4 room frame school building, accompanying outbuild-
5 ings, and surrounding one-quarter acre described on
6 pages seventy-one through seventy-three in Deed Book
7 twenty-nine of the Doddridge County Commission and
8 known collectively as the Krenn School or the St. Clara
9 community meeting place. This conveyance shall be for
10 the purpose of the historical preservation of the
11 property.

CHAPTER 211

(Com. Sub. for S. B. 591—By Senator J. Manchin)

[Passed April 7, 1989; in effect from passage. Approved by the Governor.]

AN ACT to authorize Fairmont State College to use the Highgate Carriage House property located in Fairmont, Marion County, West Virginia.

Be it enacted by the Legislature of West Virginia:

HIGHGATE CARRIAGE HOUSE.

§1. Fairmont State College authorized to use Highgate Carriage House property.

1 Fairmont State College is hereby authorized, in the
2 event the Highgate Carriage House property located in
3 Fairmont, Marion County, West Virginia, is purchased
4 by a qualified nonprofit organization approved by the
5 Internal Revenue Service, to enter into contracts and
6 leases permitting the college to occupy, use and
7 maintain portions of said property as desired for
8 operational or administrative purposes and for the

9 benefit and enhancement of the community. This
10 legislation does not authorize Fairmont State College to
11 purchase the property known as Highgate Carriage
12 House.

CHAPTER 212

(Com. Sub. for S. B. 141—By Senator Hawse)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT authorizing the Hardy County commission and the Hardy County board of education to support financially the operation of the Hardy County extension service; authorizing annual levy for such purpose; authorizing contribution of other funds for such purpose; and providing for disposition of funds.

Be it enacted by the Legislature of West Virginia:

HARDY COUNTY EXTENSION SERVICE.

- §1. Levies by county commission and county board of education to support the Hardy County extension service.
- §2. Disposition of funds; participation by West Virginia University extension service.

§1. Levies by county commission and county board of education to support the Hardy County extension service.

1 In order to provide for the support, maintenance and
2 operation of the Hardy County extension service, Hardy
3 County, West Virginia, the board of education of the
4 county of Hardy and the Hardy County commission,
5 hereinafter described as the supporting agencies, may,
6 if requested by the Hardy County extension service
7 committee, levy annually on each one hundred dollars
8 of assessed valuation of the property taxable according
9 to the last assessment for state and county purposes,
10 amounts as follows: By the board of education of the
11 county of Hardy, Class I, two and six-tenths mills; Class
12 II, five and two-tenths mills; Class III, ten and four-
13 tenths mills; Class IV, ten and four-tenths mills; by the

14 county commission of Hardy County, Class I, nine and
15 one-half mills; Class II, nineteen mills; Class III, thirty-
16 eight mills; Class IV, thirty-eight mills.

17 Each year the Hardy County extension service
18 committee may request each of the supporting agencies
19 to levy the above rates on each one hundred dollars of
20 assessed valuation of property of the same class, and
21 each of the supporting agencies may levy the rates
22 aforesaid. In addition, each supporting agency may
23 contribute to the extension service any other general or
24 specific revenues or excess levy funds.

**§2. Disposition of funds; participation by West Virginia
University extension service.**

1 Money collected or appropriated by the supporting
2 agencies for the personnel services of the Hardy County
3 extension service shall be transferred to the West
4 Virginia University extension service and disbursed by
5 it for salaries and related expenses.

6 As long as the foregoing levy continues, West Virginia
7 University extension service may contribute from its
8 funds to the support of three full-time agent positions.

CHAPTER 213

(S. B. 138—By Senators Hawse and Lucht)

[Passed February 24, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT authorizing the county commission of Jefferson
County to convey a parcel of county-owned land to the
Jefferson County Fairgrounds, reserving certain rever-
sionary rights.

Be it enacted by the Legislature of West Virginia:

JEFFERSON COUNTY.

**§1. County commission authorized to convey land to the
Jefferson County Fairgrounds.**

1 The Legislature hereby recognizes that an adequate

2 site is necessary for the citizens of Jefferson County to
3 conduct a county fair to enable youth and adults to
4 exhibit livestock, horticultural products, agricultural
5 products and home economics skills. Accordingly, the
6 Legislature hereby finds and declares that transfers of
7 any property, real or personal, made by county commis-
8 sions to any person, organization or corporation for the
9 furtherance of such activities promotes the cultural and
10 educational welfare of the public and, therefore, is a
11 public purpose.

12 The county commission of Jefferson County is hereby
13 authorized and empowered to transfer and convey unto
14 the Jefferson County Fairgrounds, all that certain
15 parcel of land situated within Middleway District of
16 Jefferson County, West Virginia, more particularly
17 bounded and described as:

18 **DESCRIPTION OF SURVEY FOR**
19 **JEFFERSON COUNTY FAIRGROUNDS**

20 A tract or parcel of land located in Middleway
21 District, Jefferson County, West Virginia, said tract or
22 parcel situated north of the property presently owned by
23 the Jefferson County Fair Association, Inc., and more
24 particularly bound and described according to a survey
25 and plat thereof made by Appalachian Surveys, Inc.,
26 said plat attached hereto and made a part of this
27 description.

28 Beginning at a 5/8-inch rebar (202) to be set, said
29 rebar SW 21-12-27 822.99 feet from a found stone
30 (1), said stone a corner with the "parent" tract and
31 with The Jefferson County Volunteer Fireman's
32 Association, Inc.; thence two new lines with The
33 Jefferson County Farm NW 74-22-26 508.15 feet to
34 a 5/8 inch rebar (203) to be set; thence SW 21-12-
35 27 300.00 feet to a found 3/8 inch rebar (5) to be
36 set, said rebar a corner with the Jefferson County
37 Farm and the property presently owned by the
38 Jefferson County Association, Inc.; thence with said
39 Association SE 74-22-26 508.15 feet to a 5/8-inch
40 rebar (201) to be set, said rebar NW 74-22-26 41.85
41 feet from a corner wooden fence post (200); thence

42 with the Jefferson County Volunteer Fireman's
43 Association, Inc. NE 21-12-27 300.00 feet to the
44 point of beginning, containing 3.48 acres.

45 Being a part of the same tract or parcel conveyed by
46 Minor Hurst and Sarah S. Hurst, husband and wife, to
47 the "Overseers of the Poor For the County of Jefferson
48 in the State of Virginia" by deed dated December 26th,
49 1857 and recorded in the Office of the Clerk of the
50 Jefferson County Commission in Deed Book 38 at page
51 24.

CHAPTER 214

(H. B. 2663—By Delegates Manuel and Mezzatesta)

[Passed March 22, 1989; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the board of education of Jefferson County, West Virginia, to meet as a levying body to certify its actions to the state tax commissioner for the purpose of presenting to the voters of the county an election to increase the county excess levy of eighty-seven and twenty-five one hundredths percent to one hundred percent for textbooks, employees salaries and benefits from Tuesday, the twenty-eighth day of March, until Thursday, the first day of June, one thousand nine hundred eighty-nine.

Be it enacted by the Legislature of West Virginia:

THE BOARD OF EDUCATION OF JEFFERSON COUNTY MEETING
AS LEVYING BODY EXTENDED TO INCREASE COUNTY EX-
CESS LEVY FOR TEXTBOOKS, EMPLOYEES SALARIES AND
BENEFITS.

§1. Extending time for board of education of Jefferson
County to meet as a levying body for election to
increase levy for textbooks, employee salaries and
benefits.

1 Notwithstanding the provisions of article eight,
2 chapter eleven of the code of West Virginia, one
3 thousand nine hundred thirty-one, as amended, to the

4 contrary, the board of education of Jefferson County is
5 hereby authorized to extend the time for its meeting as
6 a levying body to certify its actions to the state tax
7 commissioner for the purpose of presenting to the voters
8 of the county an election to increase the county excess
9 levy of eighty-seven and twenty-five one hundredths
10 percent to one hundred percent for textbooks, employees
11 salaries and benefits from Tuesday, the twenty-eighth
12 day of March, until Thursday, the first day of June, one
13 thousand nine hundred eighty-nine.

CHAPTER 215

(H. B. 2524—By Delegates Manuel and Mezzatesta)

[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county commission of Jefferson County to lease a certain parcel of real estate located in Shepherdstown District, Charles Town District and Harpers Ferry District, Jefferson County, West Virginia, for a period of up to ten years.

Be it enacted by the Legislature of West Virginia:

JEFFERSON COUNTY.

§1. County commission authorized to lease Samuel G. Michaels farm located in Shepherdstown District, Charles Town District and Harpers Ferry District.

1 The Legislature hereby recognizes that recreation is
2 necessary for the welfare of the people of Jefferson
3 County; and that the 137.424 acres Samuel G. Michaels
4 Farm was conveyed to the county commission of
5 Jefferson County for recreational purposes and that to
6 generate the necessary moneys to develop the farm as
7 a park the county commission of Jefferson County need
8 be authorized to lease all or a portion of it to any person,
9 firm or corporation for a period of up to ten years to
10 generate funds to make necessary recreational improve-
11 ments; and that such a rental would promote the general
12 welfare of the public and, therefore, is a public purpose.

13 The county commission of Jefferson County, West

14 Virginia, is hereby authorized and empowered to lease
15 for a period of up to ten years all or any portion of all
16 that tract of land located on the south side of West
17 Virginia secondary Route 22, being in Shepherdstown,
18 Charles Town and Harpers Ferry District, Jefferson
19 County, West Virginia, designated tract No. 1, as shown
20 upon that certain map entitled "Plat of Survey of
21 Samuel G. Michaels Property, Situated in Shepherd-
22 stown, Charles Town, and Harpers Ferry Districts,
23 Jefferson County, West Virginia, containing 138.25
24 Acres By Survey and Being a Part of the Same Property
25 Conveyed by William Engle, Trustee, to Samuel G.
26 Michaels by Deed Dated April 1, 1874 — Deed Book C,
27 Page 123," dated 1-29-76, approved by Samuel P.
28 McClung, L.L.S. #380, and more particularly bounded
29 and described as follows:

30 Beginning at corner #1, a corner fence post in the
31 southern right-of-way line of West Virginia secondary
32 Route 22 and a corner common to Robinson Ice and
33 Storage Company; thence leaving said road right-of-way
34 with a fence line common to Robinson Ice and Storage
35 Company: S. 21 degrees — 58' W. 2,843.52 feet to corner
36 #2, a corner fence post; thence leaving Robinson Ice and
37 Storage Company land and with a fence line common
38 to William E. Walker, thence N. 84 degrees — 13' W.
39 2,832.16 feet to corner #3, a corner fence post on or near
40 the southern right-of-way of West Virginia secondary
41 Route 22 at the intersection of a private road leading
42 onto the William E. Walker 89.66 acre tract; thence
43 leaving William E. Walker land and with the southern
44 right-of-way line of West Virginia secondary Route 22
45 for the following calls: N. 25 degrees — 00' E. 523.13
46 feet to a locust hub, N. 28 degrees — 10' E. 140.44 feet
47 on to a locust hub, N. 37 degrees — 14' E. 226.54 feet
48 to a locust hub, N. 38 degrees — 44' E. 929.40 feet
49 to a locust hub, N. 46 degrees — 44' E. 41.65 feet to a
50 locust hub, N. 59 degrees — 54' E. 42.23 feet to a locust
51 hub, N. 68 degrees — 39' E. 31.30 feet to a locust hub,
52 N. 71 degrees — 24' E. 504.88 feet to a locust hub, N.
53 69 degrees — 34' E. 256.76 feet to a point in the southern
54 right-of-way line, said point being 15 feet left of and at
55 right angles to centerline station 23+00, thence south-

56 erly 25.00 feet to a point 40 feet left of and at right
57 angles to centerline station 23+00, thence northeasterly
58 270.00 feet to a point 45 feet left of and at right angles
59 to centerline station P.T. 20+30.28, thence northeasterly
60 385.00 feet to a point 40 feet left of and at right angles
61 to centerline station P.T. 16+53.94, thence northeasterly
62 272.00 feet to a point 40 feet left of and at right angles
63 to centerline station P.C. 13+45.61, thence N. 78 degrees
64 — 15' E. 245.61 feet to a point 40 feet left of and at right
65 angles to centerline station 11+00, thence northeasterly
66 25.00 feet to a point 15 feet left of and at right angles
67 to centerline station 11+00, thence N. 78 degrees — 53'
68 E. 913.58 feet to a locust hub, thence W. 70 degrees —
69 17' E. 183.39 feet to the beginning, containing 137.424
70 acres, more or less, and being the same property
71 conveyed by Samuel G. Michaels to the State of West
72 Virginia by will dated September 22, 1972, and
73 recorded in the Office of the Clerk of Jefferson County
74 in Will Book "P" at page 42, minus 0.826 of an acre
75 additional right-of-way conveyed by the State of West
76 Virginia, Public Land Corporation to the West Virginia
77 Department of Highways by deed dated September 2,
78 1977, and recorded in the Office of the Clerk of Jefferson
79 County in Deed Book 431, at page 608.

80 Any lease agreement shall require that all improve-
81 ments made to said farm shall remain upon the lease
82 terminating. The county commission of Jefferson
83 County, West Virginia, shall deposit all rental moneys
84 received from the lease of this farm or any portion
85 thereof in a special account which moneys may only be
86 used to improve and maintain said farm.

CHAPTER 216

(S. B. 171—By Senators Chafin, Heck, Jones and Tomblin)

[Passed February 20, 1989; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the city of Kenova, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the city an election to extend the city levy for the Ceredo-Kenova War Memorial,

Ceredo-Kenova Memorial Public Library, Kenova Volunteer Fire Department, athletics and recreation, and police, fire and other employee salaries, generally, in the city of Kenova from the twenty-eighth day of March until Monday, the first day of May, one thousand nine hundred eighty-nine.

Be it enacted by the Legislature of West Virginia:

CITY OF KENOVA LEVYING BODY EXTENDED TO CONTINUE LEVY FOR THE CEREDO-KENOVA WAR MEMORIAL, CEREDO-KENOVA MEMORIAL PUBLIC LIBRARY, KENOVA VOLUNTEER FIRE DEPARTMENT, ATHLETICS AND RECREATION, AND POLICE, FIRE AND OTHER KENOVA CITY EMPLOYEE SALARIES.

§1. Extending time for city of Kenova to meet as a levying body for election to continue levy for Ceredo-Kenova War Memorial, Ceredo-Kenova Memorial Public Library, Kenova Volunteer Fire Department, athletics and recreation, and police, fire and other Kenova city employee salaries.

1 Notwithstanding the provisions of article eight,
2 chapter eleven of the code of West Virginia, one
3 thousand nine hundred thirty-one, as amended, to the
4 contrary, the city council of Kenova is hereby authorized
5 to extend the time for its meeting as a levying body and
6 certifying its actions to the state tax commissioner from
7 the twenty-eighth day of March until Monday, the first
8 day of May, one thousand nine hundred eighty-nine, for
9 the purpose of submitting to the voters of the city of
10 Kenova the extension of the city levy for the Ceredo-
11 Kenova War Memorial, Ceredo-Kenova Memorial Public
12 Library, Kenova Volunteer Fire Department, athletics
13 and recreation, and police, fire and other employee
14 salaries, generally, in the city of Kenova.

CHAPTER 217

(S. B. 419—By Senators Tucker, Mr. President, and Spears)

[Passed March 20, 1989; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the city of Richwood, West Virginia, to meet as a levying body for the purpose of

presenting to the voters of the city an election to extend the city levy to supplement current expense funds for general repairs of existing streets, alleys and sewers; acquisition of rights-of-way and construction of new streets; for services related to protection against loss by fire and street maintenance; and for services related to collection and disposal of garbage in the city of Richwood from Tuesday, the twenty-eighth day of March, until Monday, the first day of May, one thousand nine hundred eighty-nine.

Be it enacted by the Legislature of West Virginia:

CITY OF RICHWOOD LEVYING BODY EXTENDED TO CONTINUE LEVY FOR THE SUPPLEMENT OF CURRENT EXPENSE FUNDS FOR GENERAL REPAIRS OF EXISTING STREETS, ALLEYS AND SEWERS; ACQUISITION OF RIGHTS-OF-WAY AND CONSTRUCTION OF NEW STREETS; FOR SERVICES RELATED TO PROTECTION AGAINST LOSS BY FIRE AND STREET MAINTENANCE; AND FOR SERVICES RELATED TO COLLECTION AND DISPOSAL OF GARBAGE IN THE CITY OF RICHWOOD.

§1. Extending time for city of Richwood to meet as a levying body for election to continue levy to supplement current expense funds for general repairs of existing streets, alleys and sewers; acquisition of rights-of-way and construction of new streets; for services related to protection against loss by fire and street maintenance; and for services related to collection and disposal of garbage in the city of Richwood.

1 Notwithstanding the provisions of article eight,
2 chapter eleven of the code of West Virginia, one
3 thousand nine hundred thirty-one, as amended, to the
4 contrary, the city council of Richwood is hereby
5 authorized to extend the time for its meeting as a
6 levying body and certifying its actions to the state tax
7 commissioner from Tuesday, the twenty-eighth day of
8 March, until Monday, the first day of May, one thousand
9 nine hundred eighty-nine, for the purpose of submitting
10 to the voters of the city of Richwood the extension of the
11 city levy to supplement current expense funds for
12 general repairs of existing streets, alleys and sewers;

13 acquisition of rights-of-way and construction of new
14 streets; for services related to protection against loss by
15 fire and street maintenance; and for services related to
16 collection and disposal of garbage in the city of
17 Richwood.

RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 19

(By Delegates Martin and Helmick
and Mr. Speaker, Mr. Chambers)

[Adopted March 6, 1989]

Commemorating the 87th birthday of West Virginia's retired United States Senator, the Honorable Jennings Randolph.

WHEREAS, Jennings Randolph, West Virginia's retired United States Senator served with distinction in the United States Congress for 37 years, as a Senator (27 years) and Congressman (10 years); set an all-time Congressional record of 10,753 roll call votes; authored the 26th Amendment to the United States Constitution giving the right to vote to 18 to 20 year-old Americans; and served with nine United States Presidents, will on the eighth day of March, 1989, celebrate his 87th birthday; and

WHEREAS, This event in the life of this great West Virginia Statesman and American should not go unnoticed by the citizens of West Virginia and its elected representatives of the 69th Legislature; therefore, be it

Resolved by the Legislature of West Virginia:

That the members of the Legislature do hereby express their congratulations to the distinguished Statesman and fellow West Virginian in the celebration on March 8, 1989, of his 87th birthday and wish him many more such celebrations in the years to come; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution posthaste to Senator Randolph in time to be read on his birthday and that a copy suitable for framing be sent to members of his family as well.

COMMITTEE SUBSTITUTE FOR
HOUSE CONCURRENT RESOLUTION 42
(By Mr. Speaker, Mr. Chambers, and Delegate Susman)

[Adopted April 8, 1989]

Requiring the Joint Committee on Government and Finance to form a Property Tax Study Commission to examine the complete property tax system of the State of West Virginia.

WHEREAS, The Property Tax Limitation and Homestead Exemption Amendment of 1982 required the statewide reappraisal of all property to be completed, certified and published on or before March 31, 1985, for use when directed by the Legislature; and

WHEREAS, The Legislature has assigned and delegated to the State Tax Commissioner and other public officials responsibilities and duties to conduct the statewide reappraisal, to facilitate the correction of errors or defects and to provide further review of the results of the reappraisal, and to provide for the implementation of the reappraisal; and

WHEREAS, The matter of implementation of the statewide reappraisal affects every citizen of this State in that property taxation is required by the constitutional mandate of the people to be equal and uniform, and property taxes directly support local government and the public school system of the State; and

WHEREAS, The Legislature specifically delegated responsibility to the State Tax Commissioner to certify, upon completion of the review procedures, that the procedures have been substantially complied with and that the results are substantially correct so that final valuations produced by the reappraisal process may be used; and

WHEREAS, The State Tax Commissioner has not issued the certification as to the review process provided for by general law, the statewide property reappraisal has not been implemented, and the assessments and taxation in place prior to the adoption of the aforesaid Amendment of 1982 remain in effect; and

WHEREAS, Many citizens and public officials are concerned that the statewide reappraisal contains errors, inconsistencies, and other matters which undermine taxpayer confidence and raise issues as to the fiscal impact of reappraisal implemen-

tation upon public schools and local government financing and that continuing review is appropriate even though the reappraisal review procedures may have been substantially complied with and the results thereof may be substantially correct; and

WHEREAS, The Legislature recognizes that other aspects of state tax policy may also be affected by the property taxation system and that, as the Legislature has considered and enacted major reforms of the State's tax and revenue structure to advance fiscal and economic development policies which benefit the State, the taxation of property by the State should likewise be reviewed to determine whether and how property taxation can be designed to affect and contribute to such policies including innovations in tax policy which might provide appropriate means to ensure a fair distribution of tax burden to concentrated ownership of West Virginia's land, timber and minerals and to encourage rational, long-term planning and use of our State's resources; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature by the creation of the Property Tax Study Commission desires to provide an appropriate forum for the thorough review and consideration of the property tax system, including the statewide reappraisal and the relationship between such system and the State's goals of fiscal responsibility and economic development. This commission shall consist of fifteen members; five of whom shall be members of the State Senate, appointed by the President of the Senate, with no more than four of such members to be of the same political party; five of whom shall be members of the House of Delegates, appointed by the Speaker of the House of Delegates, with no more than four of such members to be of the same political party; and five members to be appointed by the Governor, one of whom shall be the State Tax Commissioner, with not more than four members to be of the same political party; and, be it

Further Resolved, That the President of the Senate, Speaker of the House of Delegates and the Governor shall confer together on their respective appointments prior to the same being made in order to ensure that the membership of the Property Tax Study Commission is reasonably diverse as to experience, knowledge, interest and representation; and, be it

Further Resolved, That the Governor shall select one of the members as Chairman, and one as Vice Chairman, and vacancies on the Commission shall be promptly filled by the original appointing authority; and, be it

Further Resolved, That the Commission may employ such professional, clerical and technical assistance as it deems necessary in order to perform its duties, and may request information from any State officers or agencies in order to assist the performance of its duties; and, be it

Further Resolved, That the Commission shall meet in Charleston or elsewhere as it may deem necessary or appropriate, and it shall convene at least monthly and at such other times as its duties may require. The first meeting shall be called jointly, by the President of the Senate and the Speaker of the House of Delegates, one of whom shall preside temporarily and until a chairman is selected; and, be it

Further Resolved, That compensation shall be paid and actual and necessary expenses shall be paid or reimbursed from legislative appropriations to the Joint Committee on Government and Finance, but no such compensation and expenses shall be incurred, paid or reimbursed without first obtaining the approval of the Joint Committee on Government and Finance; and, be it

Further Resolved, That the Commission is instructed to review and determine the status and quality of the statewide reappraisal review process and make such findings and recommendations as the Commission deems appropriate to provide for an equal and fair property tax system. The Commission shall consult with assessors; county commissioners; representatives of taxpayer groups, including, but not limited to, forestry, coal, and agriculture industries and small businesses; representatives of residential property owners; and other persons who possess knowledge, expertise, or information pertinent to the areas of inquiry identified by the Commission. The Commission or a subcommittee thereof may hold public hearings or meetings at such times and places as it deems appropriate to gather information and provide forums for public comment, in addition to its regular or special meetings. The Commission shall make interim reports

to the Joint Committee on Government and Finance periodically and shall prepare and deliver to the Joint Committee on Government and Finance a final report containing the findings and recommendations of the Commission on or before the 1st day of December, 1989; and, be it

Further Resolved, That the Commission is empowered to study, review, and make recommendations as to the following additional matters:

(1) The benefits, detriments, and viability of applying a two-tiered property tax structure to West Virginia's property tax system;

(2) The implications of adoption of an "excess acreage tax", "nonproduction tax" or similar tax upon land or natural resource holdings in the State;

(3) The prospects for integration of tax policies and structures to encourage production, processing and manufacturing activities to occur within West Virginia utilizing the natural resources and raw materials found within the State;

(4) The prospects of "roll back" or similar provisions in the property tax system to ensure fairness and an equitable sharing of the property tax burden when property is sold for development;

(5) Developing a more efficient system for the operation and training for those responsible for the identification, assessment and collection of real and personal property taxes; and

(6) Examine the feasibility of setting minimum tax rates so as to guarantee a stable base of tax revenue; and, be it

Further Resolved, That subject to prior approval of the Joint Committee on Government and Finance, the Commission may employ consultants to assist in the analysis and consideration of these subjects. The Commission shall report its findings and recommendations, if any, to the Legislature on the first day of the next Regular Session.

SENATE CONCURRENT RESOLUTION 3

(By Senators Tucker, Mr. President, Chernenko, Loehr,
Blatnik and Wiedebusch)

[Adopted March 28, 1989]

Directing that the Wheeling Interstate 470 bridge spanning the Ohio River be hereafter named and referred to as the Vietnam Veterans Memorial Bridge.

WHEREAS, This state is proud of those Vietnam veterans who served with honor in the armed forces of the United States; and

WHEREAS, There should be a suitable memorial to those Vietnam veterans of this state and other states; and

WHEREAS, The Wheeling Interstate 470 bridge spanning the Ohio River will serve admirably as a memorial honoring those Vietnam veterans; therefore, be it

Resolved by the Legislature of West Virginia:

That the Wheeling Interstate 470 bridge spanning the Ohio River be hereafter named and known as the Vietnam Veterans Memorial Bridge, as an honor and memorial to Vietnam veterans everywhere; and, be it

Further Resolved That the Clerk is hereby directed to forward a copy of this resolution to the President of the Senate and the Speaker of the House of the Ohio General Assembly, to the Commissioner of the West Virginia Department of Highways, and to the national headquarters of the Vietnam Veterans of America, the Veterans of Foreign Wars and the American Legion.

SENATE CONCURRENT RESOLUTION 22

(By Senators Holliday, Pritt and Rundle)

[Adopted April 8, 1989]

Urging the Congress of the United States to enact legislation to restore interim black lung benefits to disabled coal miners which were put in jeopardy by a recent United States Supreme Court decision.

WHEREAS, It is already an ordeal, sometimes taking up to

five years, for a coal miner suffering from black lung to obtain benefits; and

WHEREAS, It is totally unfair to make it tougher for individuals with black lung to get this interim relief; and

WHEREAS, Studies involving more than 400 miners have shown that 90 percent to 95 percent of those with more than 20 years of mining experience showed signs of black lung at death; and

WHEREAS, The miners' plight is tough enough without asking them to provide reams of medical and legal paperwork; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress of the United States is urged to support Congressman Bob Wise's bill which will allow miners to receive interim benefits by submitting a single piece of evidence supporting a diagnosis of black lung, such as a positive chest X ray, blood test, ventilatory study or doctor's opinion; and, be it

Further Resolved, That a copy of this resolution is hereby directed to be sent to the Clerk of the United States House of Representatives, to Congressmen Bob Wise, Harley O. Staggers, Nick J. Rahall and Alan Mollohan, to Senators Robert C. Byrd and John D. Rockefeller IV, and to the Vice President and President of the United States.

SENATE CONCURRENT RESOLUTION 26

(By Senators Tucker, Mr. President, Whitlow, Parker, Hylton, Rundle, Holliday, Brackenrich, Chafin and Wagner)

[Adopted March 23, 1989]

Commemorating the passing of James Kee, former U.S. Representative, gentleman and statesman.

WHEREAS, James Kee was born April 15, 1917, at Bluefield, Mercer County, and died in the year 1989 at the age of seventy-one at Montgomery, Fayette County; and

WHEREAS, During his long and colorful life, James Kee served the Congress first as an employee and then as a U.S. Representative and made innumerable contributions to the

state of West Virginia during his thirty-three years of service; and

WHEREAS, Mr. Kee, in giving unselfishly of himself to his community, his state and his country, left this world a better place than it was when he entered it; and

WHEREAS, The passing of James Kee should not go unnoticed; therefore, be it

Resolved by the Legislature of West Virginia:

That regret is hereby expressed by the members at the passing of James Kee, a great West Virginian; and, be it

Further Resolved, That the Clerk of this body is hereby directed to forward a copy of this resolution to the family of Mr. James Kee.

COMMITTEE SUBSTITUTE
FOR
HOUSE JOINT RESOLUTION 12

(By Mr. Speaker, Mr. Chambers, and Delegate Given)
(Originating in the House Committee on Constitutional Revision)

[Adopted April 1, 1989]

Proposing an amendment to the Constitution of the State of West Virginia, amending sections eight and thirteen, article nine thereof; and amending said article by adding thereto two new sections, designated sections fourteen and fifteen, all relating to municipal and county organization; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at a special election to be held on September ninth, one thousand nine hundred eighty-nine, which proposed amendment is that sections eight and thirteen, article nine, be amended; and that said article be further amended by adding thereto two new sections, designated

sections fourteen and fifteen, all to read as follows:

ARTICLE IX. COUNTY ORGANIZATION.

§8. Formation and consolidation of counties; allocation of liabilities.

1 No new county may hereafter be formed in this state
2 except by the consolidation of counties. The Legislature
3 shall provide by law for the consolidation of two or more
4 counties or the division of a county and the consolidation
5 of the division thereof with one or more other counties.
6 No such consolidation may become effective without the
7 consent of a majority of the voters residing within each
8 county affected who vote on the question. The former
9 areas shall be held responsible for their respective
10 existing liabilities as provided by law.

§13. Optional forms of county organization and government; home rule for counties.

1 Notwithstanding any provision of this constitution to
2 the contrary, the Legislature shall provide by law for
3 not less than three forms of county organizations and
4 governments, any one of which shall become effective in
5 any county when submitted to the voters thereof in an
6 election held for such purpose and approved by a
7 majority of the voters who vote on the question. At least
8 one such form of organization and government shall
9 provide for either a county manager or county executive
10 type of organization and government; at least one form
11 of such organization and government shall be the form
12 of government in effect in the counties upon the date of
13 enactment of this amendment and shall include all
14 elected county offices in effect as of that date; and at
15 least one form of such organization and government
16 shall provide for the consolidation of the offices and
17 functions of one or more of the elected county officers
18 provided for in the constitution and general laws of this
19 state as they exist when this amendment takes effect.
20 All such forms of organizations and governments shall
21 provide for the exercise of all powers vested in, and the
22 performance of all duties imposed upon, counties and
23 county officers by this constitution or by general laws.
24 Any of such forms of organizations and governments

25 may provide that counties have the power to pass such
26 laws and ordinances relating to their local affairs as the
27 Legislature may authorize.

§14. Consolidation of municipalities and counties; powers and duties of governing bodies; allocation of liabilities.

1 The Legislature shall provide by law that two or more
2 municipal governments or municipal and county go-
3 vernments may be merged into one consolidated govern-
4 ment with one set of officers but, as to a municipal and
5 county merger into one consolidated government, the
6 county shall remain as a geographical area after such
7 consolidation. Such consolidated governments may be
8 formed in a manner prescribed by law. The Legislature
9 may provide that such consolidated governments may
10 have all or any part of the combined taxing powers of
11 municipalities and counties, that such consolidated
12 governments may establish taxing districts within their
13 jurisdiction in which different rates of taxes may be
14 imposed based upon the type of services provided within
15 each district, and that the officers or governing bodies
16 of such governments may exercise any powers vested in,
17 or perform any duties imposed upon, counties and
18 municipalities and their offices and officers by this
19 constitution or by general laws.

20 No county government shall conduct an election on a
21 merger pursuant to this section without first receiving
22 consent from a majority of the members of the govern-
23 ing body of any municipality proposed to be included in
24 said consolidated government.

25 No such consolidated government may be formed
26 without the consent of a majority of the electorate voting
27 upon the question and residing within the boundaries of
28 each incorporated municipality that is proposed to be
29 merged into a consolidated government and a majority
30 of the electorate voting upon the question and residing
31 within the boundaries of the proposed consolidated
32 county and not within the boundaries of any incorpo-
33 rated municipality included in the proposed consolida-
34 tion. If any consolidation under this section includes a

35 municipality which has corporate boundaries extending
36 into one or more county or counties, the consent of a
37 majority of the voters residing in that portion of a
38 county or counties not included in the consolidation shall
39 be required.

40 The former areas shall be held responsible for their
41 existing liabilities as provided by law.

§15. Legislature may increase salaries of elected officials during term.

1 Notwithstanding the provisions of article six, section
2 thirty-eight of this constitution, the salary of a county
3 commissioner, clerks of county commissions, clerks of
4 circuit courts, sheriffs, prosecuting attorneys, assessors
5 and any other official whose office is created pursuant
6 to this article may be increased by the Legislature
7 during their terms of office. Each commissioner shall
8 receive the same salary as the other commissioners of
9 the same county.

10 *Resolved further*, That in accordance with the provi-
11 sions of article eleven, chapter three of the code of West
12 Virginia, one thousand nine hundred thirty-one, as
13 amended, such proposed amendment is hereby num-
14 bered "Amendment No. 2" and designated as the
15 "County Organization Reform Amendment" and the
16 purpose of the proposed amendment is summarized as
17 follows: "To allow alternate forms of local government
18 and consolidation."

COMMITTEE SUBSTITUTE
FOR
HOUSE JOINT RESOLUTION 21
(By Mr. Speaker, Mr. Chambers)
[By Request of the Executive]

[Adopted March 28, 1989.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section two of article twelve thereof, relating to education and supervision of free schools; eliminating the office of state superintendent of

free schools as a constitutional office and the West Virginia board of education as a constitutional board; providing that the powers and duties of such office and board shall be exercised and performed by such department or person as shall be prescribed by law; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at a special election to be held on the ninth day of September, one thousand nine hundred eighty-nine, for the purpose of presenting to the voters of the State the question of ratification or rejection of one or more constitutional amendments, which proposed amendment is that section two of article twelve be amended to read as follows:

ARTICLE XII. EDUCATION.

§2. Supervision of free schools.

1 The supervision of the free schools of the State shall
2 be vested in such department within the executive
3 branch of state government as shall be prescribed by
4 law, which department shall have such powers and
5 perform such duties as shall be prescribed by law.
6 Wherever elsewhere in this Constitution reference is
7 made to the West Virginia board of education or
8 superintendent of free schools, such reference shall
9 henceforth be read, construed and understood to mean,
10 respectively, such department or person specified by law
11 as being responsible for the exercise and performance
12 of the powers and duties previously vested in such board
13 and superintendent. Until the effective date of such law,
14 the supervision of the free schools shall continue to be
15 vested in the West Virginia board of education, and the
16 state superintendent of free schools shall continue to be
17 the chief school officer of the state.

18 *Resolved further*, That in accordance with the provi-
19 sions of article eleven, chapter three of the code of West
20 Virginia, one thousand nine hundred thirty-one, as
21 amended, such proposed amendment is hereby num-
22 bered "Amendment No. 1" and designated as the
23 "Education Reorganization Amendment," and the
24 purpose of the proposed amendment is summarized as
25 follows: "To amend the state Constitution so as to
26 eliminate the office of the state superintendent of free
27 schools as a constitutional office and the West Virginia
28 board of education as a constitutional board, and to vest
29 the responsibility for the exercise and performance of
30 the powers and duties of the state superintendent and
31 state board in such department of state government or
32 person as shall be prescribed by law."

SENATE JOINT RESOLUTION 11

(By Senators Tucker, Mr. President, and Harman)

[By Request of the Executive]

[Adopted April 6, 1989]

Proposing an amendment to the Constitution of the State of West Virginia, repealing section eight of article twelve and amending sections one, two, four and seventeen of article seven thereof, repealing an archaic provision in the Constitution; relating to the executive department of state government; eliminating the offices of secretary of state, treasurer and commissioner of agriculture as constitutional offices; providing that the powers and duties of such offices shall be exercised and performed by such departments or persons as shall be prescribed by law; limiting the number of terms of office for the auditor and attorney general; providing for vacancies in the executive department, accounting for moneys, and false reporting constituting perjury; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at a special election to be held on September ninth, one thousand nine hundred eighty-nine, for the purpose of presenting to the voters of the State the question of ratification or rejection of one or more constitutional amendments, which proposed amendment is that section eight, article twelve be repealed, and that sections one, two, four and seventeen of article seven be amended to read as follows:

ARTICLE VII. EXECUTIVE DEPARTMENT.

§1. Executive department.

1 The executive department shall consist of a governor,
2 auditor and attorney general, who shall be, ex officio,
3 reporter of the court of appeals. Their terms of office
4 shall be four years and shall commence on the first
5 Monday after the second Wednesday of January next
6 after their election. They shall reside at the seat of
7 government during their terms of office, keep there the
8 public records, books and papers pertaining to their
9 respective offices and shall perform such duties as may
10 be prescribed by law.

11 The persons holding the offices of secretary of state,
12 treasurer and commissioner of agriculture on the date
13 of ratification of the amendment of this section shall
14 continue in office and complete their terms of office,
15 unless vacated by death, resignation or otherwise.
16 Thereafter, the powers and duties previously vested in
17 the secretary of state, treasurer and commissioner of
18 agriculture shall be exercised and performed by such
19 departments or persons in the respective departments of
20 state government as shall be prescribed by law.
21 Wherever elsewhere in this Constitution reference is
22 made to the secretary of state, treasurer or commis-
23 sioner of agriculture, such reference shall henceforth be
24 read, construed and understood to mean such depart-
25 ment or person.

§2. Election.

1 An election for governor, auditor and attorney general

2 shall be held at such times and places as may be
3 prescribed by law.

§4. Eligibility.

1 None of the executive officers mentioned in this article
2 shall hold any other office during the term of service.

3 A person who has been elected or who has served as
4 auditor or attorney general during all or any part of two
5 consecutive terms shall be ineligible for the same office
6 during any part of the term immediately following the
7 second of the two consecutive terms. The person holding
8 the office of auditor or attorney general when this
9 section is ratified shall not be prevented from holding
10 the office during the term immediately following the
11 term being served at the time of ratification.

12 A person who has been elected or who has served as
13 governor during all or any part of two consecutive terms
14 shall be ineligible for the office of governor during any
15 part of the term immediately following the second of the
16 two consecutive terms.

§17. Vacancies in other executive departments.

1 If the office of auditor or attorney general shall
2 become vacant by death, resignation or otherwise, it
3 shall be the duty of the governor to fill the same by
4 appointment, and the appointee shall hold the office
5 until a successor shall be elected and qualified in such
6 manner as may be prescribed by law. The subordinate
7 officers of the executive department and the officers of
8 all public institutions of the state shall keep an account
9 of all moneys received or disbursed by them, respec-
10 tively, from all sources and for every service performed,
11 and make a semiannual report thereof to the governor
12 under oath or affirmation; and any officer who shall
13 willfully make a false report shall be deemed guilty of
14 perjury.

15 *Resolved further*, That in accordance with the provi-
16 sions of article eleven, chapter three of the code of West
17 Virginia, one thousand nine hundred thirty-one, as

18 amended, such proposed amendment is hereby num-
19 bered "Amendment No. 3" and designated as the "Better
20 Government Amendment," and the purpose of the
21 proposed amendment is summarized as follows: "To
22 amend the state Constitution so as to eliminate the
23 offices of secretary of state, treasurer and commissioner
24 of agriculture as constitutional offices; to vest the
25 responsibility for the exercise and performance of the
26 powers and duties of such offices in such departments
27 of state government and persons as shall be prescribed
28 by law; to limit the number of terms of office for the
29 auditor and attorney general; and to repeal an archaic
30 provision in the Constitution.

HOUSE RESOLUTION 12

(By Mr. Speaker, Mr. Chambers, and Delegate R. Burk)

[Adopted February 24, 1989]

Relating to empowering the House Committee on the Judiciary
to investigate allegations of impeachable offenses
against the State Treasurer.

WHEREAS, On the twenty-first day of February, one thousand
nine hundred eighty-nine, House Resolution 9 was presented
to the House of Delegates, alleging the loss of an estimated
Two Hundred Seventy-nine Million Dollars from the "Consol-
idated Investment Fund"; and

WHEREAS, The said resolution alleges that "[t]he losses
incurred by said fund appear to and may be the result of
incompetence, neglect of duty or maladministration by the
State Treasurer"; and

WHEREAS, On the day aforesaid the said resolution as
presented to the House of Delegates was referred to the House
Committee on the Judiciary; and

WHEREAS, The said resolution raises issues which may relate
to acts or omissions in the administration and conduct of the
office of the Treasurer of the State of West Virginia, by the
Treasurer, A. James Manchin, and calls for a determination
by the House of Delegates as to whether said acts or omissions
by the Treasurer may constitute offenses for which the
Treasurer should be impeached pursuant to section nine,

article IV of the Constitution of the State of West Virginia; and

WHEREAS, The matters raised by the said resolution are a proper subject of investigation by the House of Delegates; therefore, be it

Resolved by the House of Delegates:

That the House Committee on the Judiciary be, and it is by this resolution, empowered (1) To investigate, or cause to be investigated, any allegations or charges raised in the aforesaid resolution which may relate to maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor by the Treasurer of the State of West Virginia; (2) to hold a hearing or hearings thereon; (3) to make findings of fact based upon such investigations and hearings; (4) to report to the House of Delegates its findings of facts and any recommendations which the Committee on the Judiciary may deem proper; and (5) if the recommendation of the committee be to impeach the Treasurer, to present to the House of Delegates a proposed resolution of impeachment and proposed articles of impeachment; and, be it

Further Resolved, That in carrying out its duties pursuant to this resolution, the House Committee on the Judiciary is authorized:

(1) To examine witnesses, to send for persons and papers, documents and other physical evidence, to order the attendance of any witness, or the production of any paper, document and other physical evidence, and to exercise all other powers described under the provisions of section five, article one, chapter four of the Code of West Virginia;

(2) To issue summonses, subpoenas and subpoenas duces tecum and to enforce obedience to its summonses and subpoenas in accordance with the provisions of section five, article one, chapter four of the Code of West Virginia or by invoking the aid of the courts of this state;

(3) To administer oaths or affirmations in accordance with the provisions of section six, article one, chapter four of the Code of West Virginia; and

(5) To determine whether all or any portion of a meeting or

hearing should be held in an executive session, notwithstanding the provisions of Rule eighty-three of the Rules of the House of Delegates; and, be it

Further Resolved, That in carrying out his duties pursuant to this resolution, the Chairman of the Committee on the Judiciary is authorized:

(1) To establish or define rules of procedure for the conduct of meetings or hearings held pursuant to this resolution;

(2) To employ, with the prior approval of the Speaker of the House, a court reporter or stenographer and such other professional or clerical employees as may be reasonably required;

(3) To designate a subcommittee or subcommittees of the Committee on the Judiciary to assist the Chairman or the Committee in performing his or its duties pursuant to this resolution; and

(4) To determine the time and place of all meetings or hearings of the Committee and its designated subcommittees; and, be it

Further Resolved, That the Committee on the Judiciary, during its inquiry, may entertain such procedural and dispositive motions as may be made in the case of any other bill or resolution referred to that Committee, or, in making its recommendations, if any, pursuant to this resolution, may include any one or more of the following:

(1) A recommendation that the House of Delegates and its Committee on the Judiciary delay any further consideration of the charges raised in the aforesaid resolution until a time certain;

(2) A recommendation that the Treasurer of the State of West Virginia, A. James Manchin, not be impeached;

(3) A recommendation (A) That the Treasurer of the State of West Virginia, A. James Manchin, be impeached for maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor, and that the said A. James Manchin be removed from office and be thereafter disqualified from holding any office of honor, trust or profit, under this State; and (B) that the House of

Delegates adopt a resolution of impeachment and formal articles of impeachment as prepared by the Committee on the Judiciary and deliver the same to the Senate in accordance with the procedures of the House of Delegates, for consideration by the Senate according to law; and

(4) A recommendation of proposed legislation to correct any perceived statutory deficiencies found by the Committee.

HOUSE RESOLUTION 19

(Originating in the House Committee on the Judiciary)

[Adopted March 29, 1989]

Relating to the impeachment of A. James Manchin, Treasurer of the State of West Virginia, for maladministration, incompetency, neglect of duty, and high crimes and misdemeanors in his office as Treasurer of the State of West Virginia.

Resolved, That A. James Manchin, Treasurer of the State of West Virginia, be impeached for maladministration, incompetency, neglect of duty, and high crimes and misdemeanors in his office as Treasurer of the State of West Virginia, and that said articles of impeachment, being seventeen in number, be and they are hereby adopted by the House of Delegates, and that the same shall be exhibited to the Senate in the following words and figures, to-wit:

ARTICLES exhibited by the House of Delegates of West Virginia in the name of themselves and all of the people of the State of West Virginia against A. James Manchin, who was at the general election held in November, 1984, duly elected to the office of Treasurer of the State of West Virginia, and on the 14th day of January, 1985, after having duly qualified as such Treasurer of the State of West Virginia by taking the required oath to support the Constitution of the United States and the Constitution of the State of West Virginia and to faithfully discharge the duties thereof to the best of his skill and judgment, entered upon the discharge of the duties thereof, and continued therein for a full term of four years; and, who was, at the general election held in November, 1988, again duly elected to said office of Treasurer of the State of West Virginia, and on January 16, 1989, after having again

duly qualified as such, by again taking the required oath to support the Constitution of the United States and the Constitution of this State and to faithfully discharge the duties of the office to the best of his skill and judgment, again entered upon the discharge of the duties thereof for a second term of four years, ending January 13, 1993, in maintenance and support of their impeachment against him, the said A. James Manchin, Treasurer of the State of West Virginia, for maladministration, incompetency, neglect of duty, and high crimes and misdemeanors.

Article I

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there, with regard to the discharge of the duties of his office, delegated major elements of supervision to his subordinates, and thereafter failed to exercise reasonable and proper supervisory oversight of said subordinates in regard to the proper discharge of their duties.

Article II

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or his employees under his direct control and supervision, or both A. James Manchin and his employees under his direct control and supervision, failed to use due diligence in protecting securities under his control from loss from any cause.

Article III

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high

office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or his employees under his direct control and supervision, or both A. James Manchin and his employees under his direct control and supervision, made investments of funds of the Consolidated Fund (commonly called the Consolidated Investment Fund) with maturity dates beyond ten years, without the approval of a majority of the members of the West Virginia State Board of Investments, in violation of investment policy guidelines adopted by said Board on February 19, 1985.

Article IV

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin and his employees under his direct control and supervision, on and after January 14, 1985, continued to maintain, within the Consolidated Fund (commonly called the Consolidated Investment Fund), a reserve for losses (commonly called a reserve account or "rainy day fund") without approval of the West Virginia State Board of Investments, in violation of legislative rules promulgated by the Board pursuant to statutory law.

Article V

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or his employees under his direct control and supervision, or both A. James Manchin and his employees

under his direct control and supervision, entered into reverse repurchase agreements, through the Consolidated Fund (commonly called the Consolidated Investment Fund), in amounts exceeding the West Virginia State Board of Investments' investment policy guidelines adopted by the Board on February 19, 1985, to-wit: The movement of the total dollar value of reverse repurchase agreements during April, 1987, was as follows:

Date	Amount	Percentage of Total Fund
April 1, 1987	\$996,344,313.00	41%
April 3, 1987	\$797,608,813.00	33%
April 8, 1987	\$822,952,325.00	34%
April 13, 1987	\$623,217,325.00	26%
April 15, 1987	\$619,205,306.00	25%
April 21, 1987	\$514,515,981.00	21%
April 27, 1987	\$ 76,400,000.00	3%

Article VI

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or his employees under his direct control and supervision, or both A. James Manchin and his employees under his direct control and supervision, entered into futures or options contracts, through the Consolidated Fund (commonly called the Consolidated Investment Fund), in violation of the West Virginia State Board of Investments' investment policy guidelines adopted by the said Board on December 29, 1986, such options being speculative in nature, to-wit:

The Investments Division of the State Treasurer's office, using funds of the said Consolidated Fund, wrote two options in March, 1987. As the writer of the options, the said Investments Division received premiums paid by the buyers of the options.

The said Investments Division wrote a call option on March 4, 1987, on \$15,000,000.00 of Federal National Mortgage Association (FNMA) notes due on March 10, 1992, and received a premium of \$37,500.00. The said Investments Division purchased \$67,000,000.00 of FNMA notes on March 10, 1987, maturing on March 10, 1992 (\$15,000,000.00 of which was to cover the call option in the event it was exercised by the buyer). The call option expired on May 4, 1987, without being exercised, meaning the buyer did not buy the FNMA notes. Thereafter, the said Investments Division sold the \$67,000,000.00 of FNMA notes on June 4, 1987, and incurred a loss in the said Consolidated Fund of \$4,284,375.00 of which \$956,250.00 of the loss resulted from the sale of the FNMA notes purchased to cover the call option. The net loss in the said Consolidated Fund was reduced by the premium received, \$37,500.00, to \$918,750.00 on these transactions.

The said Investments Division wrote a put option on March 12, 1987, for \$200,000,000.00 of United States Treasury Notes due on November 15, 1996, and received a premium of \$1,671,875.00. However, the put option was exercised by the buyer of the put on May 12, 1987, meaning the buyer of the put forced the said Investments Division to take possession of the \$200,000,000.00 of United States Treasury Notes. In turn, the said Investments Division sold the investments on the same day and incurred a loss in the said Consolidated Fund of \$15,421,875.00. The net loss in the said Consolidated Fund was reduced by the premium received, \$1,671,875.00, to \$13,750,000.00 on this transaction.

Article VII

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or his employees under his direct control and supervision, or both A. James Manchin and his employees under his direct control and supervision, failed to distribute earnings or allocate losses to the several participants in the

Consolidated Fund (commonly called the Consolidated Investment Fund) in an equitable manner, to-wit:

(1) Prior to May, 1987, the Treasurer's office made apportionments of purported earnings to the several participants in the said Consolidated Fund which were less than the actual amounts which were earned by the said Consolidated Fund.

(2) Beginning in May, 1987, the Treasurer's office made apportionments of purported earnings to the several participants in the said Consolidated Fund which were greater than the actual amounts which were earned by the said Consolidated Fund.

(3) Beginning in May, 1987, and for periods thereafter during which the said Consolidated Fund experienced actual losses in earnings income, or negative income, the Treasurer's office did not allocate losses among the several participants in the said Consolidated Fund, but instead made apportionments of purported earnings to the several participants in the said Consolidated Fund.

Article VIII

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or his employees under his direct control and supervision, or both A. James Manchin and his employees under his direct control and supervision, paid costs and expenses from the Investment Service Fees Account which were not incurred in the performance of the functions of the West Virginia State Board of Investments and were therefore not proper charges against, and were not payable on a pro rata basis from, the earnings of the various funds managed by the said Board, to-wit:

(1) The Treasurer's office did pay wages and salaries of some employees of the Treasurer's office from the Investment Service Fees Account, which such wages and salaries were not for personal services rendered by or on behalf of the West Virginia State Board of Investments.

(2) The Treasurer's office did pay expenses of the Treasurer's office and the Treasurer, A. James Manchin, from the Investment Service Fees Account, which such expenses were not incurred by or on behalf of the West Virginia State Board of Investments.

Article IX

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or employees under his direct control and supervision, or both A. James Manchin and his employees under his direct control and supervision, made charges against purported earnings of the various funds managed by the West Virginia State Board of Investments and deposited the same into the Investment Service Fees Account when, in fact, such earnings did not exist or were overstated.

Article X

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: Notwithstanding that A. James Manchin, as Treasurer of the State of West Virginia, is, by statute, the Executive Secretary of the West Virginia State Board of Investments and the custodian of all funds, securities and assets held by the Board, and notwithstanding that the office of the Treasurer is, by statute, the staff agency for said Board, A. James Manchin and staff of the State Treasurer's office failed, with respect to investments made with funds of the Consolidated Fund (commonly called the Consolidated Investment Fund), to exercise that degree of judgment and care, under circumstances then prevailing, which men of experience, prudence, discretion and intelligence exercise in the management of their own affairs, not for

speculation but for investment considering the probable safety of their capital as well as the probable income to be derived.

Article XI

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin and his employees under his direct control and supervision violated, with respect to investments made with funds of the Consolidated Fund (commonly called the Consolidated Investment Fund), generally and specifically, general investment policies of the West Virginia State Board of Investments as to (1) purpose, (2) standard of care, (3) diversification, (4) permissible investments and (5) social responsibility.

Article XII

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: That the said A. James Manchin and his employees under his direct control and supervision generally and specifically violated, with respect to investments made with funds of the Consolidated Fund (commonly called the Consolidated Investment Fund), the general investment policies of the West Virginia State Board of Investments as to (1) preservation of capital, (2) stability, (3) liquidity and (4) turnover.

Article XIII

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in

the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: Notwithstanding that A. James Manchin, as State Treasurer, as a member of, and Executive Secretary of, the West Virginia State Board of Investments, and as chief executive officer of the staff agency for said Board, had a fiduciary duty to recognize investment losses as they occurred within the Consolidated Fund (commonly called the Consolidated Investment Fund) and to timely report such losses to said Board, A. James Manchin breached said duty by failing to recognize and report such losses after being informed by trusted employees of the Treasurer's office, Mary Jane Lopez and Jack Fuller, in November, 1987, that investment losses had occurred.

Article XIV

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there appointed an individual to manage a multi-billion dollar portfolio of investments, as well as other duties, without care or attention to such person's qualifications, to-wit: A. James Manchin appointed and retained a person to direct the management and investment of funds of the Consolidated Fund (commonly called the Consolidated Investment Fund), knowing that the said person had no formal education or training to qualify said person to direct the investment or trading in investments of funds within the said Consolidated Fund, and knowing that the said person had participated as an investments officer in the trading of investments which had resulted in losses within the said Consolidated Fund during the months of April, May and June, 1987.

Article XV

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in

the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or his senior staff, or both A. James Manchin and his senior staff, conspired to cover up losses which occurred in April, May and June, 1987, in the Consolidated Fund (commonly called the Consolidated Investment Fund) and to withhold information as to such losses from the various participants in the said Consolidated Fund and from the people of West Virginia.

Article XVI

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: Notwithstanding that A. James Manchin had the benefit of numerous warnings concerning bond market conditions during the second quarter of 1987 and the trading position of the Investments Division of the Treasurer's office with regard to the various portfolios of the Consolidated Fund (commonly called the Consolidated Investment Fund) under his control, and notwithstanding that A. James Manchin received direct reports of investment losses in the said Consolidated Fund, A. James Manchin failed, omitted or neglected to recognize and react to these warning signals and reports, to-wit: A. James Manchin failed, omitted or neglected to recognize and react to the following:

(1) Action taken by the Board of Directors of the West Virginia Housing Development Fund during April, May and June, 1987, to withdraw all of its funds from the said Consolidated Fund, because said bond market conditions and the type of investments held by the said Consolidated Fund had caused the investment portfolio of the West Virginia Housing Development Fund to be "under water" or worth less than par value.

(2) A letter from John L. O'Grady of Salomon Brothers dated April 3, 1987, directed to Arnold T. Margolin, Assistant Treasurer, with copies thereof directed to the members of the

West Virginia State Board of Investments, of which A. James Manchin was and is a member, wherein Salomon Brothers questioned the position of the said Consolidated Fund in the then-existing bond market and described the potential risks to which the said Consolidated Fund was exposed.

(3) A letter from Governor Arch A. Moore, Jr., a member of and Chairman of the West Virginia State Board of Investments, dated April 15, 1987, directed to A. James Manchin, who was and is State Treasurer and Executive Secretary of the West Virginia State Board of Investments, expressing great concern with the contents of the Salomon Brothers letter, a copy of which the Governor had received from said O'Grady, expressing concern with the volatility of interest rates existing at that time and the potential effect on the portfolio of the said Consolidated Fund, and expressing particular concern with Arnold T. Margolin's interpretation of investment guidelines of the West Virginia State Board of Investments.

(4) Meetings and conversations which took place in November, 1987, with Mary Jane Lopez and Jack Fuller, two valued and trusted employees of the Treasurer, wherein A. James Manchin was informed by the said Lopez and Fuller of losses on investments of funds of the said Consolidated Fund made by the said Investments Division.

Article XVII

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there overdelegated the duties and responsibilities of the office of State Treasurer, to the detriment of the people of West Virginia, to-wit: Throughout his tenure as State Treasurer, A. James Manchin has:

(1) Delegated the substantive duties and responsibilities of the Investments Division of the Treasurer's office, first, to Arnold T. Margolin and, subsequently, to Mary Hudson, without requiring such persons to be accountable for their

activities or for their direction of the said Investments Division.

(2) Attended primarily to self-created ceremonial functions, not required by law to be performed, and not directly related to the discharge of the duties of the office of Treasurer of the State of West Virginia.

(3) Failed to obtain even a conversational understanding of the functions of the said Investments Division.

(4) Failed to impose adequate controls upon employees of the Treasurer's office to ensure the proper conduct of their assigned or delegated duties and responsibilities.

(5) Failed to require that proper internal audits be performed to supervise investment trading and other financial transactions carried out within the office of the Treasurer.

(6) Failed to establish effective lines of communication within the Treasurer's office necessary to keep himself informed of the manner in which delegated duties and responsibilities were being carried out, and, further, failed to properly pursue issues or questions raised by communications which did come to his attention.

(7) Allowed inadequate record keeping and improper reporting procedures, as to the performance of the Consolidated Fund (commonly called the Consolidated Investment Fund), to be established and continued.

(8) Brought an absence of care and attention to the duties and responsibilities of his office, and failed to have a concern for the discharge of his duties that would reasonably be expected of a person holding the office of State Treasurer or a similar executive office.

Wherefore, the said A. James Manchin, Treasurer of the State of West Virginia, failed to discharge the duties of his office, and was and is guilty of maladministration, incompetency, neglect of duty, and high crimes and misdemeanors.

And the House of Delegates of West Virginia, saving to themselves the liberty and rights of exhibiting at any time hereafter any further articles against the said A. James Manchin, Treasurer of the State of West Virginia, as aforesaid, and also of replying to his answers which he may

make unto the articles herein preferred against him, and of offering proof to any and all of the articles herein contained, and every part thereof, and to all and every other article, accusation or impeachment, which shall be exhibited by the said House of Delegates as the case may require, do demand that the said A. James Manchin, Treasurer as aforesaid, may be put to answer the maladministration, incompetency, neglect of duty, and high crimes and misdemeanors, herein charged against him, and that such proceedings, examinations, trials and judgments, may be thereupon had, given and taken, as may be agreeable to the Constitution and laws of the State of West Virginia, and as justice may require.

We, Robert C. Chambers, Speaker of the House of Delegates of West Virginia, and Donald L. Kopp, Clerk thereof, do certify that the above and foregoing Articles of Impeachment preferred by said House of Delegates against A. James Manchin, Treasurer of the State of West Virginia, were adopted by the House of Delegates on the 29th day of March, 1989.

In Testimony Whereof, we have signed our names hereunto this the 29th day of March, 1989.

ROBERT C. CHAMBERS
Speaker of the House of Delegates

DONALD L. KOPP
Clerk of the House of Delegates

HOUSE RESOLUTION 20

(Originating in the House Committee on the Judiciary)

[Adopted March 29, 1989]

Recommending the public reprimand and censure of Glen B. Gainer, Jr., Auditor of the State of West Virginia.

WHEREAS, On the twenty-first day of February, one thousand nine hundred eighty-nine, House Resolution 9 was presented to the House of Delegates, alleging the loss of an estimated two hundred seventy-nine million dollars from the "Consolidated Investment Fund"; and

WHEREAS, The said resolution alleges that "[t]he losses incurred by said Fund appear to and may be the result of incompetence, neglect of duty or maladministration by the State Treasurer"; and

WHEREAS, On the day aforesaid the said resolution as presented to the House of Delegates was referred to the Committee on the Judiciary; and

WHEREAS, On the twenty-fourth day of February, one thousand nine hundred eighty-nine, House Resolution 12 was adopted by the House of Delegates empowering the Committee on the Judiciary to, among other things, "report to the House of Delegates its findings of facts and any recommendations which the Committee on the Judiciary may deem proper" respecting the matters raised in the said House Resolution 9; and

WHEREAS, During the course of its proceedings pursuant to said House Resolution 12, the Committee on the Judiciary heard testimony and reviewed documentary evidence concerning the official conduct of members of the West Virginia State Board of Investments, including the official conduct of the Auditor, Glen B. Gainer, Jr., who is a member of said Board, the said Auditor having served in such capacity since January fourteenth, one thousand nine hundred eighty-five, and continues to so serve; and

WHEREAS, The Committee on the Judiciary has concluded its proceedings with respect to the said House Resolution 12 and, in addition to other recommendations otherwise dealt with, submits the findings and recommendation set forth herein; and

WHEREAS, As a result of the aforementioned proceedings, the Committee has determined that the said Auditor, Glen B. Gainer, Jr., has: (1) Overdelegated certain of his substantive duties and responsibilities of the office of the Auditor to some members of his staff without establishing effective methods of communication and without requiring such persons to be accountable to and report important activities and information to him; (2) neglected to keep himself adequately informed, as a member of the West Virginia State Board of Investments,

as to the status of the funds within the Consolidated Fund (commonly called the Consolidated Investment Fund); and (3) otherwise failed to effectively participate, in an active manner, as a member of the West Virginia State Board of Investments; and

WHEREAS, The Committee on the Judiciary is of the opinion that the said Glen B. Gainer, Jr., Auditor of the State of West Virginia, should be publicly reprimanded and censured for and because of his aforementioned conduct; therefore, be it

Resolved by the House of Delegates:

That Glen B. Gainer, Jr., Auditor of the State of West Virginia, be and he is hereby publicly reprimanded and censured for and because of this aforementioned conduct; and, be it

Further Resolved, That the Clerk of the House of Delegates be and he is hereby directed to forward a copy of this resolution to the said Glen B. Gainer, Jr., Auditor of the State of West Virginia.

HOUSE RESOLUTION 21

(By Mr. Speaker, Mr. Chambers, and Delegate Hatcher)

[Adopted April 7, 1989]

Providing for the appointment of a committee of five on the part of the House of Delegates to go before the Senate to impeach A. James Manchin, Treasurer of the State of West Virginia, for maladministration, incompetence, neglect of duty, and high crimes and misdemeanors, and, as managers on the part of the House of Delegates, to deliver to the Senate articles of impeachment, and to conduct the impeachment against A. James Manchin.

Resolved, That a committee of five members of the House of Delegates be appointed by the Speaker, and that such committee be and it is hereby directed to go before the Senate, and deliver to the Clerk of the Senate a message whereby the said committee, in the name of the House of Delegates and the people of the State of West Virginia, impeaches A. James Manchin, Treasurer of the State of West Virginia, for

maladministration, incompetence, neglect of duty, and high crimes and misdemeanors in his office, and acquaint the Senate that the House of Delegates will exhibit particular articles of impeachment against him, the said A. James Manchin, Treasurer of the State of West Virginia, as aforesaid, and make good the same, and that said committee demand that the Senate cause to be served upon the said A. James Manchin a true copy of the articles of impeachment and take order for the appearance of the said A. James Manchin to answer to said impeachment; and, be it

Further Resolved, That said committee of five members of the House of Delegates be and it is hereby directed to act as managers on the part of the House of Delegates to carry and deliver to the Clerk of the Senate the said articles of impeachment; and, be it

Further Resolved, That said committee of five, as managers, be and it is hereby directed to conduct the impeachment against the said A. James Manchin, Treasurer of this State, before the Senate, in accordance with procedural rules adopted by the Senate, with all necessary assistance as may be required and provided by employees of the House or Senate and by such professional, clerical and stenographic assistants as may be engaged by the House or Senate for such purposes.

SENATE RESOLUTION 26

(Originating in the Senate Committee on Rules)

[Adopted April 3, 1989]

Amending Rules of the Senate, relating to "Bill Reading Docket."

Resolved by the Senate:

That the Standing Rules of the Senate be amended by adding thereto a new rule, designated Senate Rule No. 21a, to read as follows:

21a. Upon motion of any member, on any legislative day or the day preceding, the Senate may, by a vote of two thirds of those present, establish a period of time known as "Bill Reading Docket".

Such motion shall state each bill to be read, the time and order for such Bill Reading Docket to commence and to conclude, and may provide for the adjournment or recess of the Senate for not more than one legislative day, during which reading of the docket no motion, except a motion to postpone the reading of the bills, by two-thirds vote of those elected, shall be heard. A quorum shall not be required during the Reading of the Docket. Any and all members requesting that a bill be read shall be present at all times in the Chamber during its reading.

All bills read on the Bill Reading Docket shall be considered as having been read fully and distinctly.

SENATE RESOLUTION 35
(By Senator Brackenrich)

[Adopted April 6, 1989]

Directing the West Virginia Department of Natural Resources to make an in-depth study of mandatory hunter safety programs in West Virginia and other states.

WHEREAS, Hunting is a popular sport enjoyed by thousands in West Virginia, and over the past five years we have averaged sixty-five hunter-related accidents and seven fatalities per year; and

WHEREAS, Thirty-nine states, four of which border West Virginia, and six Canadian provinces currently have mandatory hunter education programs; and

WHEREAS, It is in the public interest to address the issue of hunter safety and to develop programs to minimize the danger while enhancing the enjoyment of hunting; therefore, be it

Resolved by the Senate:

That the West Virginia Department of Natural Resources make an in-depth study of the mandatory hunter safety programs in West Virginia and other states, said report to include the following: Statistics on the effect of mandatory hunter safety programs on hunting accidents; how long other states have required completion of a hunter safety program as a requisite to obtaining a hunting license; and a list of states which have reciprocal agreements with West Virginia

regarding hunting licensing and hunter education programs; and, be it

Further Resolved, That a report on the findings of said study be made to the West Virginia Legislature no later than January 15, 1991; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Director, Department of Natural Resources, Charleston, West Virginia.

SENATE RESOLUTION 37

(By Senators Tucker, Mr. President, Holliday, Boettner, M. Manchin, Holmes, Pritt, and Brackenrich.)

[Adopted April 7, 1989]

Encouraging the speedy development of the Elk River and its proximity into a national recreational area by the federal and state governments and the citizens of West Virginia.

WHEREAS, By far the greatest recreational opportunity in West Virginia is the development of the Elk River and its tributaries as a first-class national recreational area under the Department of the Interior; and

WHEREAS, The counties most affected are Clay, Pocahontas, Nicholas, Randolph, Webster, Braxton and Kanawha; and

WHEREAS, The Elk River, which is the longest river within the bounds of the state of West Virginia with crystal clear water, has excellent fishing, scenic splendor, in close proximity to modern highways; and

WHEREAS, The development would require additional and improved access highways; and

WHEREAS, By necessity a main headquarters and modern lodge would have to be built; and

WHEREAS, Hunting, boating, hiking, picnicking, camping and other recreation such as golfing, tennis, canoeing, aerial trams, horse riding trails, public swimming areas, and scenic railroads would find an ideal location; and

WHEREAS, New and permanent employment with such a

national recreation area and through necessary supporting businesses, motels, restaurants, gasoline stations, sporting goods stores and general retail stores would increase at a rapid rate and remain at a high and stable level; and

WHEREAS, Such development would be an important step in solving the economic problems of central West Virginia and the economic impact would, in fact, be statewide in significance; and

WHEREAS, We see scenic overlooks, preserving swinging bridges, historical plays centered about Confederate and Union battles and legends of Indians who lived in the nearby mountains continuing; and

WHEREAS, We are urging immediate steps be taken to begin work on the project; and

WHEREAS, We must be ready for the increased number of people who will be seeking recreation; the increase in per capita income; the increase in per capita leisure time; and the increase in per capita travel; and

WHEREAS, West Virginia contains a charm and alluring atmosphere that is yet to be discovered by millions of people throughout the nation and our state's hospitality is genuine to homefolks and visitors from afar; therefore, be it

Resolved by the Senate:

That the Senate go on record strongly urging and encouraging the development of the Elk River and its proximity into a national recreational area as soon as possible; and, be it

Further Resolved, That a copy of this resolution be transmitted to the following persons: President George Bush; the National Park Services of the United States; the Interior Department; United States Senators Robert C. Bryd and John D. Rockefeller IV, United States Congressmen Robert Wise, Alan Mollohan, Harley O. Staggers, Jr. and Nick Jo Rahall; and Governor Gaston Caperton, and further released to any organizations and individuals the Senate may deem appropriate.

LEGISLATURE OF WEST VIRGINIA

ACTS

EXTRAORDINARY SESSION, 1989

CHAPTER 1

(Com. Sub. for H. B. 104—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed February 1, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact section six, article one-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article one-a by adding thereto a new section, designated section seven; and to amend and reenact chapter six-b of said code, all relating generally to ethical standards of governmental officials and employees and disclosure of financial interests of such persons; requiring financial disclosure by candidates for public office; the duties and authority of the secretary of state with respect thereto; providing a short title with respect to said chapter six-b; definition of certain terms with respect thereto; providing for certain legislative findings and purposes; clarifying that the remedies provided in said chapter six-b are in addition to other applicable remedies in said code; providing for the severability of the provisions of said chapter; creating within state government a West Virginia ethics commission and providing for its membership; providing for the appointment of such members and their respective

terms of office; requiring that such persons take an oath of office; providing for their compensation and reimbursement of expenses; establishing certain rules with respect to the meetings of the commission; providing rules with respect to voting procedures of the commission and a quorum thereof; describing the powers, duties and authority of the commission and providing for its facilities and staff; requiring the commission to promulgate legislative rules and regulations to carry out the purposes of said chapter six-b and the time within which such rules and regulations are to be promulgated; authorizing the commission to issue advisory opinions and the effect thereof with respect to persons acting pursuant thereto; the powers of the commission with respect to the hearing of complaints brought against public officials and employees; authorizing the commission to employ hearing examiners, issuing subpoenas and subpoenas duces tecum; the authority of the commission to impose certain administrative sanctions for violations of said chapter; conciliation agreements; providing for procedures with respect to the filing of complaints against persons subject to said chapter and the conducting of hearings with respect thereto; providing for confidentiality requirements as to commission members and staff; providing for confidentiality of certain proceedings of the commission; penalties; requiring a record of hearings conducted by the commission; penalties; permitting commission members to recuse themselves in certain instances; authority to recommend prosecution; authority to commence civil proceedings; judicial review; civil actions against complainants; effective dates; statute of limitations; providing ethical standards for elected and appointed officials, as well as certain public employees; prohibiting the use of public office for private gain; exceptions; limitation on gifts; exceptions; limiting the right of certain elected and appointed officials or employees to contract with certain governmental agencies and providing for certain exceptions with respect thereto; prohibiting the disclosure of confidential information; limiting the rights of certain public officials and employees to represent certain

persons before any agency by whom such officials and employees are or were employed; exemption; prohibiting certain public officials and employees from seeking employment with persons whom they regulate; exemptions; clarifying when members of the Legislature are required to vote upon disclosure of an interest in a matter before the Legislature; limiting the rights of certain public officials and employees in licensing or rate-making proceedings in certain cases; requiring the filing of financial disclosure statements by certain public officials, public employees and candidates, the contents thereof and the time when such statements are to be filed; providing for the appointment of special prosecutors in certain cases; providing for penalties for violations of said chapter; providing for termination of commission; providing for registration and reporting requirements for lobbyists; defining certain terms relating to lobbyists and lobbying activities; prescribing the information required of lobbyists upon registration; providing for an information booklet identifying registered lobbyists; establishing reporting requirements for lobbyists; providing for registration and reporting by grass roots lobbying campaigns; making it a violation of law to pay a person to lobby who is not registered; describing the duties of lobbyists and defining certain acts which are violations; limiting lobbying within the legislative chambers; defining certain crimes and establishing the penalties therefor; and authorizing municipalities to enact ordinances regulating lobbyists.

Be it enacted by the Legislature of West Virginia:

That section six, article one-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article one-a be further amended by adding thereto a new section, designated section seven; and that chapter six-b be amended and reenacted, all to read as follows:

Chapter

3. Elections.

6B. Public Officers and Employees; Ethics; Conflicts of Interest; Financial Disclosure.

CHAPTER 3. ELECTIONS.

ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.

§3-1A-6. Election rules; powers and duties of secretary of state; exercise of powers by appointees.

§3-1A-7. Candidate's financial disclosure statement.

§3-1A-6. Election rules; powers and duties of secretary of state; exercise of powers by appointees.

1 The secretary of state shall be the chief election
2 official of the state. He shall have authority, after
3 consultation with the state election commission, of which
4 he is a member, to make, amend and rescind such rules,
5 regulations and orders as may be necessary to carry out
6 the policy of the Legislature, as contained in this
7 chapter. In order to avoid conflicting provisions between
8 regulations promulgated by the secretary of state and
9 the state commission on ethics, the rules and regulations
10 promulgated under this section shall be legislative rules
11 and shall be promulgated pursuant to the provisions of
12 chapter twenty-nine-a of the code of West Virginia. All
13 regulations adopted prior to the first day of January, one
14 thousand nine hundred eighty-nine, shall be submitted
15 on or before the first day of August, one thousand nine
16 hundred eighty-nine, to the Legislature for review by
17 the legislative rule-making review committee and
18 approval by the Legislature.

19 It shall be the duty of all election officials, county
20 commissions, clerks of county commissions, clerks of
21 circuit courts, boards of ballot commissioners, election
22 commissioners and poll clerks to abide by such rules,
23 regulations and orders, which shall include:

24 (a) Uniform rules of procedure for registrars and
25 other registration officials in the performance of their
26 duties, as to time and manner of performance;

27 (b) Uniform rules for the purging of registration
28 records;

29 (c) Uniform rules for challenging registrants; and

30 (d) Any other rules, regulations or directions neces-

31 sary to standardize and make effective the administra-
32 tion of the provisions of this chapter.

33 The secretary of state also shall have authority to
34 require collection and report of statistical information
35 and to require other reports by county commissions,
36 clerks of county commissions and clerks of circuit
37 courts.

38 It shall be his further duty to advise with election
39 officials; to furnish to the election officials a sufficient
40 number of indexed copies of the current election laws
41 of West Virginia and the administrative orders and
42 rules and regulations issued or promulgated thereunder;
43 to investigate the administration of election laws, frauds
44 and irregularities in any registration or election; to
45 report violations of election laws to the appropriate
46 prosecuting officials; and to prepare an annual report.

47 The secretary of state shall also have the power to
48 administer oaths and affirmations, issue subpoenas for
49 the attendance of witnesses, issue subpoena duces tecum
50 to compel the production of books, papers, records,
51 registration records and other evidence, and fix the time
52 and place for hearing any matters relating to the
53 administration and enforcement of this chapter, or the
54 rules, regulations and directions promulgated or issued
55 hereunder by the secretary of state as the chief election
56 official of the state. In case of disobedience to a subpoena
57 or subpoena duces tecum, he may invoke the aid of any
58 circuit court in requiring the attendance, evidence and
59 testimony of witnesses and the production of papers,
60 books, records, registration records and other evidence.

61 All powers and duties vested in the secretary of state
62 under this article may be exercised by appointees of the
63 secretary of state at his discretion, but the secretary of
64 state shall be responsible for their acts.

§3-1A-7. Candidate's financial disclosure statement.

1 Candidates for election to any state, county or
2 municipal office, county school board, district school
3 board, or to the position of county or district school
4 board superintendent, shall file a financial disclosure

- 5 statement with the ethics commission as may be
6 required under subsection (a), section six, article two,
7 chapter six-b of this code.

**CHAPTER 6B.
PUBLIC OFFICERS AND EMPLOYEES;
ETHICS; CONFLICTS OF INTEREST;
FINANCIAL DISCLOSURE.**

Article

1. Short Title; Legislative Findings, Purposes and Intent; Construction and Application of Chapter; Severability.
2. West Virginia Ethics Commission; Powers and Duties; Disclosure of Financial Interest by Public Officials and Employees; Appearances Before Public Agencies.
3. Lobbyists.

ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT; CONSTRUCTION AND APPLICATION OF CHAPTER; SEVERABILITY.

§6B-1-1. Short title.

§6B-1-2. Legislative findings, purpose, declaration and intent.

§6B-1-3. Definitions.

§6B-1-4. Remedies and penalties in addition to other applicable remedies and penalties.

§6B-1-5. Severability.

§6B-1-1. Short title.

- 1 This chapter shall be known as the "West Virginia
- 2 Governmental Ethics Act."

§6B-1-2. Legislative findings, purpose, declaration and intent.

- 1 (a) The Legislature hereby finds that the holding of
- 2 a public office or public employment is a public trust.
- 3 Independence and impartiality of public officials and
- 4 public employees are essential for the maintenance of
- 5 the confidence of our citizens in the operation of a
- 6 democratic government. The decisions and actions of
- 7 public officials and public employees must be made free
- 8 from undue influence, favoritism or threat, at every
- 9 level of government. Public officials and public em-
- 10 ployees who exercise the powers of their office or
- 11 employment for personal gain beyond the lawful
- 12 emoluments of their position or who seek to benefit
- 13 narrow economic or political interests at the expense of

14 the public at large undermine public confidence in the
15 integrity of a democratic government.

16 (b) It is the purpose of this chapter to maintain
17 confidence in the integrity and impartiality of the
18 governmental process in the state of West Virginia and
19 its political subdivisions and to aid public officials and
20 public employees in the exercise of their official duties
21 and employment; to define and establish minimum
22 ethical standards for elected and appointed public
23 officials and public employees; to eliminate actual
24 conflicts of interest; to provide a means to define ethical
25 standards; to provide a means of investigating and
26 resolving ethical violations; and to provide administra-
27 tive and criminal penalties for specific ethical violations
28 herein found to be unlawful.

29 (c) The Legislature finds that the state government
30 and its many public bodies and local governments have
31 many part-time public officials and public employees
32 serving in elected and appointed capacities; and that
33 certain conflicts of interest are inherent in part-time
34 service and do not, in every instance, disqualify a public
35 official or public employee from the responsibility of
36 voting or deciding a matter; however, when such conflict
37 becomes personal to a particular public official or public
38 employee, such person should seek to be excused from
39 voting, recused from deciding, or otherwise relieved
40 from the obligation of acting as a public representative
41 charged with deciding or acting on a matter.

42 (d) It is declared that high moral and ethical stand-
43 ards among public officials and public employees are
44 essential to the conduct of free government; that the
45 Legislature believes that a code of ethics for the
46 guidance of public officials and public employees will
47 help them avoid conflicts between their personal
48 interests and their public responsibilities, will improve
49 standards of public service and will promote and
50 strengthen the faith and confidence of the people of this
51 state in their public officials and public employees.

52 (e) It is the intent of the Legislature that in its
53 operations the West Virginia ethics commission created

54 under this chapter shall protect to the fullest extent
55 possible the rights of individuals affected.

§6B-1-3. Definitions.

1 As used in this chapter, unless the context in which
2 used clearly requires otherwise:

3 (a) "Compensation" means money, thing of value or
4 financial benefit. The term "compensation" does not
5 include reimbursement for actual reasonable and
6 necessary expenses incurred in the performance of one's
7 official duties.

8 (b) "Employee" means any person in the service of
9 another under any contract of hire, whether express or
10 implied, oral or written, where the employer or an agent
11 of the employer or a public official has the right or
12 power to control and direct such person in the material
13 details of how work is to be performed and who is not
14 responsible for the making of policy nor for recommend-
15 ing official action.

16 (c) "Ethics commission", "commission on ethics" or
17 "commission" means the West Virginia ethics
18 commission.

19 (d) "Immediate family", with respect to an individual,
20 means a spouse residing in the individual's household
21 and any dependent child or children and dependent
22 parent or parents.

23 (e) "Ministerial functions" means actions or functions
24 performed by an individual under a given state of facts
25 in a prescribed manner in accordance with a mandate
26 of legal authority, without regard to, or without the
27 exercise of, such individual's own judgment as to the
28 propriety of the action being taken.

29 (f) "Person" means an individual, corporation, busi-
30 ness entity, labor union, association, firm, partnership,
31 limited partnership, committee, club or other organiza-
32 tion or group of persons, irrespective of the denomina-
33 tion given such organization or group.

34 (g) "Political contribution" means and has the same
35 definition as is given that term under the provisions of
36 article eight, chapter three of this code.

37 (h) "Public employee" means any full-time or part-
38 time employee of any governmental body or any political
39 subdivision thereof, including county school boards.

40 (i) "Public official" means any person who is elected
41 or appointed and who is responsible for the making of
42 policy or takes official action which is either ministerial
43 or nonministerial, or both, with respect to
44 (i) contracting for, or procurement of, goods or services,
45 (ii) administering or monitoring grants or subsidies,
46 (iii) planning or zoning, (iv) inspecting, licensing,
47 regulating or auditing any person, or (v) any other
48 activity where the official action has an economic impact
49 of greater than a *de minimis* nature on the interest or
50 interests of any person.

51 (j) "Respondent" means a person who is the subject of
52 an investigation by the commission or against whom a
53 complaint has been filed with the commission.

54 (k) "Thing of value", "other thing of value", or
55 "anything of value" means and includes (i) money, bank
56 bills or notes, United States treasury notes, and other
57 bills, bonds or notes issued by lawful authority and
58 intended to pass and circulate as money; (ii) goods and
59 chattels; (iii) promissory notes, bills of exchange, orders,
60 drafts, warrants, checks, bonds given for the payment
61 of money or the forbearance of money due or owing;
62 (iv) receipts given for the payment of money or other
63 property; (v) any right or chose in action; (vi) chattels
64 real or personal or things which savor of realty and are,
65 at the time taken, a part of a freehold, whether they are
66 of the substance or produce thereof or affixed thereto,
67 although there may be no interval between the severing
68 and the taking away thereof; (vii) any interest in realty,
69 including, but not limited to, fee simple estates, life
70 estates, estates for a term or period of time, joint
71 tenancies, cotenancies, tenancies in common, partial
72 interests, present or future interests, contingent or
73 vested interests, beneficial interests, leasehold interests,
74 or any other interest or interests in realty of whatsoever
75 nature; (viii) any promise of employment, present or

76 future; (ix) donation or gift; (x) rendering of services or
77 the payment thereof; (xi) any advance or pledge; (xii) a
78 promise of present or future interest in any business or
79 contract or other agreement; or (xiii) every other thing
80 or item, whether tangible or intangible, having eco-
81 nomic worth. "Thing of value", "other thing of value" or
82 "anything of value" shall not include anything which is
83 *de minimis* in nature nor a lawful political contribution
84 reported as required by law.

§6B-1-4. Remedies and penalties in addition to other applicable remedies and penalties.

1 The provisions of this chapter shall be in addition to
2 any other applicable provisions of this code and shall not
3 be deemed to be in derogation of or as a substitution for
4 any other provisions of this code, including, but not
5 limited to, article five-a, chapter sixty-one of this code
6 and the remedies and penalties provided in this chapter
7 shall be in addition to any other remedies or penalties
8 which may be applicable to any circumstances relevant
9 to both.

§6B-1-5. Severability.

1 The provisions of subsection (cc), section ten, article
2 two, chapter two of this code shall apply to the
3 provisions of this chapter to the same extent as if the
4 same were set forth in extenso herein.

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.

- §6B-2-1. West Virginia ethics commission created; members; appointment, term of office and oath; compensation and reimbursement for expenses; meetings and quorum.
- §6B-2-2. Same—General powers and duties.
- §6B-2-3. Advisory opinions.
- §6B-2-4. Complaints; dismissals; hearings; disposition; judicial review.
- §6B-2-5. Ethical standards for elected and appointed officials and public employees.
- §6B-2-6. Financial disclosure statement; filing requirements.
- §6B-2-7. Financial disclosure statement; contents.
- §6B-2-8. Exceptions to financial disclosure requirements and conflicts of interest provisions.

§6B-2-9. Special prosecutor authorized.

§6B-2-10. Violations and penalties.

§6B-2-11. Termination of commission.

§6B-2-1. West Virginia ethics commission created; members; appointment, term of office and oath; compensation and reimbursement for expenses; meetings and quorum.

1 (a) There is hereby created the West Virginia ethics
2 commission, consisting of twelve members, no more than
3 seven of whom shall be members of the same political
4 party. The members of the commission shall be ap-
5 pointed by the governor with the advice and consent of
6 the Senate. Within thirty days of the effective date of
7 this section, the governor shall make the initial appoint-
8 ments to the commission. No person may be appointed
9 to the commission or continue to serve as a member of
10 the commission, who holds elected or appointed office
11 under the government of the United States, the state of
12 West Virginia or any of its political subdivisions, or who
13 is a candidate for any of such offices, or who is otherwise
14 subject to the provisions of this chapter other than by
15 reason of his or her appointment to or service on the
16 commission. A member may contribute to a political
17 campaign, but no member shall hold any political party
18 office, or participate in a campaign relating to a
19 referendum or other ballot issue.

20 (b) At least two members of the commission shall
21 have served as a member of the West Virginia Legis-
22 lature; at least two members of the commission shall
23 have been employed in a full-time elected or appointed
24 office in state government; at least one member shall
25 have served as an elected official in a county or
26 municipal government or on a county school board; at
27 least one member shall have been employed full time as
28 a county or municipal officer or employee; and at least
29 two members shall have served part time as a member
30 or director of a state, county or municipal board,
31 commission or public service district and at least four
32 members shall be selected from the public at large. No
33 more than four members of the commission shall reside
34 in the same congressional district.

35 (c) Of the initial appointments made to the commis-
36 sion, two shall be for a term ending one year after the
37 effective date of this section, two for a term ending two
38 years after the effective date of this section, two for a
39 term ending three years after the effective date of this
40 section, three for a term ending four years after the
41 effective date of this section, and three shall be for terms
42 ending five years after the effective date of this section.
43 Thereafter, terms of office shall be for five years, each
44 term ending on the same day of the same month of the
45 year as did the term which it succeeds. Each member
46 shall hold office from the date of his or her appointment
47 until the end of the term for which he or she was
48 appointed or until his or her successor qualifies for
49 office. When a vacancy occurs as a result of death,
50 resignation, or removal in the membership of this
51 commission, it shall be filled by appointment within
52 thirty days of the vacancy for the unexpired portion of
53 the term in the same manner as original appointments.
54 No member shall serve more than two consecutive full
55 or partial terms, and no person may be reappointed to
56 the commission until at least two years have elapsed
57 after the completion of a second successive term.

58 (d) Each member of the commission shall take and
59 subscribe to the oath or affirmation required pursuant
60 to Section 5, Article IV of the Constitution of West
61 Virginia. A member may be removed by the governor
62 for substantial neglect of duty, gross misconduct in
63 office or violation of this chapter, after written notice
64 and opportunity for reply.

65 (e) The commission shall meet within thirty days of
66 the initial appointments to the commission at a time and
67 place to be determined by the governor, who shall
68 designate a member to preside at that meeting until a
69 chairman is elected. At its first meeting, the commission
70 shall elect a chairman and such other officers as are
71 necessary. The commission shall within ninety days
72 after its first meeting adopt rules for its procedures.

73 (f) Seven members of the commission shall constitute
74 a quorum, except that when the commission is sitting
75 as a hearing board pursuant to section four of this

76 article, then five members shall constitute a quorum.
77 Except as may be otherwise provided in this article, a
78 majority of the total membership shall be necessary to
79 act at all times.

80 (g) Members of the commission shall receive one
81 hundred dollars for each day actually devoted to the
82 business of the commission and, in addition thereto,
83 shall be reimbursed for expenses actually and necessar-
84 ily incurred in the performance of their official duties
85 as such members.

86 (h) The commission shall appoint an executive direc-
87 tor to assist the commission in carrying out its functions
88 in accordance with commission rules and regulations
89 and with applicable law. Said executive director shall
90 be paid such salary as may be fixed by the commission
91 or as otherwise provided by law. The commission shall
92 appoint and discharge counsel and employees and shall
93 fix the compensation of employees and prescribe their
94 duties. Counsel to the commission shall advise the
95 commission on all legal matters and on the instruction
96 of the commission may commence such civil actions as
97 may be appropriate: *Provided*, That no counsel shall
98 both advise the commission and act in a representative
99 capacity in any proceeding.

100 (i) The commission may delegate authority to the
101 chairman or executive director to act in the name of the
102 commission between meetings of the commission, except
103 that the commission shall not delegate the power to hold
104 hearings and determine violations to the chairman or
105 executive director.

106 (j) The chairman shall have the authority to designate
107 subcommittees of three persons, no more than two of
108 whom may be members of the same political party. Said
109 subcommittees shall be investigative panels which shall
110 have the powers and duties set forth hereinafter in this
111 article.

112 (k) The principal office of the commission shall be in
113 the seat of government but it or its designated subcom-
114 mittees may meet and exercise its power at any other
115 place in the state. Meetings of the commission shall be

116 public unless such meetings or hearings are required to
117 be private in conformity with the provisions of this
118 chapter relating to confidentiality, except that the
119 commission shall exclude the public from attendance at
120 discussions of commission personnel, planned or ongoing
121 litigation and planned or ongoing investigations.

122 (l) Meetings of the commission shall be upon the call
123 of the chairman and shall be conducted by the personal
124 attendance of the commission members and no meeting
125 shall be conducted by telephonic or other electronic
126 conferencing, nor shall any member be allowed to vote
127 by proxy: *Provided*, That telephone conferencing and
128 voting may be held for the purpose of approving or
129 rejecting any proposed advisory opinions prepared by
130 the commission, or for voting on issues involving the
131 administrative functions of the commission. Meetings
132 held by telephone conferencing shall require notice to
133 members in the same manner as meetings to be
134 personally attended, shall be electronically recorded,
135 and the recordings shall be made a permanent part of
136 the commission records. Members shall not be compensated for meetings other than those personally attended.

§6B-2-2. Same—General powers and duties.

1 (a) The commission shall promulgate rules and
2 regulations to carry out the purposes of this article
3 within six months of the effective date of this section.
4 Such rules and regulations shall be legislative rules
5 subject to legislative rule-making review and subject to
6 the provisions of the administrative procedures act.

7 (b) The commission may subpoena witnesses, compel
8 their attendance and testimony, administer oaths and
9 affirmations, take evidence and require by subpoena the
10 production of books, papers, records or other evidence
11 needed for the performance of the commission's duties
12 or exercise of its powers, including its duties and powers
13 of investigation.

14 (c) The commission shall, in addition to its other
duties:

15 (1) Prescribe forms for reports, statements, notices,
16 and other documents required by law;

17 (2) Prepare and publish manuals and guides explain-
18 ing the duties of individuals covered by this law; and
19 giving instructions and public information materials to
20 facilitate compliance with, and enforcement of, this act;
21 and

22 (3) Provide assistance to agencies, officials and
23 employees in administering the provisions of this act.

24 (d) The commission may:

25 (1) Prepare reports and studies to advance the
26 purpose of the law;

27 (2) Contract for any services which cannot satisfactor-
28 ily be performed by its employees;

29 (3) Request the attorney general to provide legal
30 advice without charge to the commission, and the
31 attorney general shall comply with the request;

32 (4) Employ additional legal counsel; and

33 (5) Request appropriate agencies of state government
34 to provide such professional assistance as it may require
35 in the discharge of its duties: *Provided*, That any agency
36 providing such assistance other than the attorney
37 general shall be reimbursed by the West Virginia ethics
38 commission the cost of such assistance.

§6B-2-3. Advisory opinions.

1 A person subject to the provisions of this chapter may
2 make application in writing to the ethics commission for
3 an advisory opinion on whether an action or proposed
4 action violates the provisions of this chapter, and would
5 thereby expose the person to sanctions by the commis-
6 sion or criminal prosecution. The commission shall
7 respond within thirty days from the receipt of the
8 request by issuing an advisory opinion on the matter
9 raised in the request. All advisory opinions shall be
10 published and indexed in the code of state rules by the
11 secretary of state: *Provided*, That before an advisory
12 opinion is made public, any material which may identify
13 the person who is the subject of the opinion, shall to the

14 fullest extent possible, be deleted and the identity of the
15 person shall not be revealed. A person subject to the
16 provisions of this chapter may rely upon the published
17 guidelines or an advisory opinion of the commission, and
18 any person acting in good faith reliance on any such
19 guideline or opinion shall be immune from the sanctions
20 of this chapter, and shall have an absolute defense to any
21 criminal prosecution for actions taken in good faith
22 reliance upon any such opinion or guideline.

**§6B-2-4. Complaints; dismissals; hearings; disposition;
judicial review.**

1 (a) Upon the filing by any person with the commission
2 of a complaint which is duly verified by oath or
3 affirmation, the executive director of the commission or
4 his or her designee shall, within three working days,
5 acknowledge the receipt of the complaint by first class
6 mail, unless the complainant or his or her representative
7 personally filed the complaint with the commission and
8 was given a receipt or other acknowledgement evidenc-
9 ing the filing. Within fourteen days after the receipt of
10 a complaint, an investigative panel shall be appointed
11 to investigate the substance of the allegations in the
12 complaint and to determine whether there is probable
13 cause to believe that a violation of this chapter has
14 occurred. The method of selecting and rotating appoint-
15 ments of members to investigative panels shall be
16 established by legislative rule of the commission.

17 (b) In the absence of a filed complaint, if the commis-
18 sion otherwise receives or discovers information which
19 may merit an inquiry as to whether a violation of this
20 chapter has occurred, the commission may, by the
21 affirmative vote of seven of its members, appoint an
22 investigative panel on its own initiative to investigate
23 such matters and to determine whether there is
24 probable cause to believe that a violation of this chapter
25 has occurred.

26 (c) In the case of a filed complaint, the first inquiry
27 of the investigative panel shall be a question as to
28 whether or not the allegations of the complaint, if taken
29 as true, would constitute a violation of law upon which

30 the commission could properly act under the provisions
31 of this chapter. If the complaint is determined by a
32 majority vote of the investigative panel to be insufficient
33 in this regard, the investigative panel shall dismiss the
34 complaint. A dismissal under this subsection shall not
35 preclude the commission from initiating an investiga-
36 tion on its own initiative under the provisions of
37 subsection (b) of this section.

38 (d) After the commission receives a complaint found
39 by the investigative panel to be sufficient, or makes a
40 decision to investigate possible violations on its own
41 initiative, the executive director shall give notice of a
42 pending investigation by the investigative panel to the
43 complainant and respondent. The notice of investigation
44 shall be mailed to the parties, and, in the case of the
45 respondent, shall be mailed as certified mail, return
46 receipt requested, marked "Addressee only, personal
47 and confidential". The notice shall describe the conduct
48 of the respondent which is the basis for an alleged
49 violation of law, and if a complaint has been filed, a copy
50 of the complaint shall be appended to the notice mailed
51 to the respondent. Each notice of investigation shall
52 inform the respondent that the purpose of the investi-
53 gation is to determine whether probable cause exists to
54 believe that a violation of law has occurred which may
55 subject the respondent to administrative sanctions by
56 the commission, criminal prosecution by the state, or
57 civil liability. The notice shall further inform the
58 respondent that he or she has a right to appear before
59 the investigative panel, and that he or she may respond
60 in writing to the commission within thirty days after the
61 receipt of the notice, but that no fact or allegation shall
62 be taken as admitted by a failure or refusal to timely
63 respond.

64 (e) Within the forty-five day period following the
65 mailing of a notice of investigation, the investigative
66 panel shall proceed to consider (1) the allegations raised
67 in the complaint or by the commission's inquiry, (2) any
68 timely received written response of the respondent, and
69 (3) any other competent evidence gathered by or
70 submitted to the commission which has a proper bearing

71 on the issue of probable cause. A respondent shall be
72 afforded the opportunity to appear before the investig-
73 ative panel and make an oral response to the complaint.
74 The commission shall, in promulgating legislative rules
75 pursuant to the provisions of subsection (a), section two
76 of this article, prescribe the manner in which a
77 respondent may present his oral response to the
78 investigatory panel. The commission may request a
79 respondent to disclose specific amounts received from a
80 source, and other detailed information not otherwise
81 required to be set forth in a statement or report filed
82 under the provisions of this chapter, if the information
83 sought is deemed to be probative as to the issues raised
84 by a complaint or an investigation initiated by the
85 commission. Any information thus received shall be
86 confidential. If the person so requested fails or refuses
87 to furnish the information to the commission, the
88 commission may exercise its subpoena power as pro-
89 vided for elsewhere in this chapter, and any subpoena
90 issued thereunder shall have the same force and effect
91 as a subpoena issued by a circuit court of this state, and
92 enforcement of any such subpoena may be had upon
93 application to a circuit court of the county in which the
94 investigatory panel is conducting an investigation,
95 through the issuance of a rule or an attachment against
96 the respondent as in cases of contempt.

97 (f) (1) Members of the commission and its staff shall
98 not disclose any information relating to a complaint,
99 including the identity of the complainant or respondent,
100 except that the commission may release any information
101 at any time if the release has been agreed to in writing
102 by the respondent, and the identity of the complainant
103 shall be released to the respondent immediately upon
104 request. No present or former member of the commis-
105 sion or present or former employee of the commission
106 may knowingly and improperly disclose any confidential
107 information acquired by him or her in the course of his
108 or her official duties.

109 (2) If, in a specific case, the commission finds that
110 there is a reasonable likelihood that the dissemination
111 of information or opinion in connection with a pending

112 or imminent proceeding will interfere with a fair
113 hearing or otherwise prejudice the due administration
114 of justice, the commission may order that all or a portion
115 of the information communicated to the commission to
116 cause an investigation and all allegations of ethical
117 misconduct or criminal acts contained in a complaint
118 shall be confidential, and the person providing such
119 information or filing a complaint shall be bound to
120 confidentiality until further order of the commission.

121 (g) If a majority of the members of the investigative
122 panel fails to find probable cause, the proceedings shall
123 be dismissed by the commission in an order signed by
124 the majority members of the panel, and copies of the
125 order of dismissal shall be sent to the complainant and
126 the respondent forthwith. If the investigative panel
127 decides by a majority vote that there is probable cause
128 to believe that a violation under this chapter has
129 occurred, the majority members of the investigatory
130 panel shall sign an order directing the commission staff
131 to prepare a statement of charges, to assign the matter
132 for hearing to the commission or a hearing examiner as
133 the commission may subsequently direct, and to sche-
134 dule a hearing to determine the truth or falsity of the
135 charges, such hearing to be held within ninety days
136 after the date of the order.

137 (h) At least eighty days prior to the date of the
138 hearing, the respondent shall be served by certified
139 mail, return receipt requested, with the statement of
140 charges and a notice of hearing setting forth the date,
141 time and place for the hearing. The scheduled hearing
142 may be continued only upon a showing of good cause by
143 the respondent or under such other circumstances as the
144 commission shall, by legislative rule, direct.

145 (i) The commission members who have not served as
146 members of an investigatory panel in a particular case
147 may sit as a hearing board to adjudicate the case or may
148 permit an assigned hearing examiner employed by the
149 commission to preside at the taking of evidence. The
150 commission shall, by legislative rule, establish the
151 general qualifications for hearing examiners. Such
152 legislative rule shall also contain provisions which seek

153 to ensure that the functions of a hearing examiner will
154 be conducted in an impartial manner, and shall describe
155 the circumstances and procedures for disqualification of
156 hearing examiners.

157 (j) A member of the commission or a hearing exam-
158 iner presiding at a hearing may:

159 (1) Administer oaths and affirmations, compel the
160 attendance of witnesses and the production of docu-
161 ments, examine witnesses and parties, and otherwise
162 take testimony and establish a record;

163 (2) Rule on offers of proof and receive relevant
164 evidence;

165 (3) Take depositions or have depositions taken when
166 the ends of justice may be served;

167 (4) Regulate the course of the hearing;

168 (5) Hold conferences for the settlement or simplifica-
169 tion of issues by consent of the parties;

170 (6) Dispose of procedural requests or similar matters;

171 (7) Accept stipulated agreements;

172 (8) Take other action authorized by the ethics commis-
173 sion consistent with the provisions of this chapter.

174 (k) With respect to allegations of a violation under
175 this chapter, the complainant has the burden of proof.
176 The West Virginia rules of evidence as used to govern
177 proceedings in the courts of this state, shall be given like
178 effect in hearings held before the commission or a
179 hearing examiner. The commission shall, by legislative
180 rule, regulate the conduct of hearings so as to provide
181 full procedural due process to a respondent. Hearings
182 before a hearing examiner shall be recorded electron-
183 ically. When requested by either of the parties, the
184 presiding officer shall make a transcript, verified by
185 oath or affirmation, of each hearing held and so
186 recorded. In the discretion of the commission, a record
187 of the proceedings may be made by a certified court
188 reporter. Unless otherwise ordered by the commission,
189 the cost of preparing a transcript shall be paid by the

190 party requesting the transcript. Upon a showing of
191 indigency, the commission may provide a transcript
192 without charge. Within fifteen days following the
193 hearing, either party may submit to the hearing
194 examiner that party's proposed findings of fact. The
195 hearing examiner shall thereafter prepare his or her
196 own proposed findings of fact, and make copies of the
197 findings available to the parties. The hearing examiner
198 shall then submit the entire record to the commission
199 for final decision.

200 (l) The recording of the hearing or the transcript of
201 testimony, as the case may be, and the exhibits, together
202 with all papers and requests filed in the proceeding, and
203 the proposed findings of fact of the hearing examiner
204 and the parties, constitute the exclusive record for
205 decision by the commission, unless by leave of the
206 commission a party is permitted to submit additional
207 documentary evidence or take and file depositions or
208 otherwise exercise discovery.

209 (m) The commission shall set a time and place for the
210 hearing of arguments by the complainant and respondent,
211 or their respective representatives, and shall notify
212 the parties thereof, and briefs may be filed by the
213 parties in accordance with procedural rules promul-
214 gated by the commission. The final decision of the
215 commission shall be made in writing within forty-five
216 days of the receipt of the entire record of a hearing held
217 before a hearing examiner or, in the case of an
218 evidentiary hearing held by the board in lieu of a
219 hearing examiner, within twenty-one days following the
220 close of the evidence.

221 (n) A decision to impose sanctions must be approved
222 by at least six members of the commission.

223 (o) Members of the commission shall recuse them-
224 selves from a particular case upon their own motion
225 with the approval of the commission or for good cause
226 shown upon motion of a party. The remaining members
227 of the commission shall, by majority vote, select a
228 temporary member of the commission to replace a
229 recused member.

230 (p) A complainant may be assisted by a member of
231 the commission staff assigned by the commission after
232 a determination of probable cause.

233 (q) No member of the commission staff may partic-
234 ipate in the commission deliberations or communicate
235 with commission members concerning the merits of a
236 complaint after being assigned to prosecute a complaint.

237 (r) If the commission finds by evidence beyond a
238 reasonable doubt that the facts alleged in the complaint
239 are true and constitute a material violation of this
240 article, it may impose one or more of the following
241 sanctions:

242 (1) Public reprimand;

243 (2) Cease and desist orders;

244 (3) Orders of restitution for money, things of value, or
245 services taken or received in violation of this chapter;
246 or

247 (4) Fines not to exceed one thousand dollars per
248 violation.

249 In addition to imposing such sanctions, the commis-
250 sion may recommend to the appropriate governmental
251 body that a respondent be terminated from employment
252 or removed from office.

253 The commission may institute civil proceedings in the
254 circuit court of the county wherein a violation occurred
255 for the enforcement of sanctions.

256 (s) At any stage of the proceedings under this section,
257 the commission may enter into a conciliation agreement
258 with a respondent if such agreement is deemed by a
259 majority of the members of the commission to be in the
260 best interest of the state and the respondent.

261 (t) Decisions of the commission involving the issuance
262 of sanctions may be appealed to the circuit court of
263 Kanawha County, West Virginia, or to the circuit court
264 of the county where the violation is alleged to have
265 occurred, only by the respondent, and only upon the
266 grounds set forth in section four, article five, chapter
267 twenty-nine-a of this code.

268 (u) In the event the commission finds in favor of the
269 person complained against, the commission shall order
270 reimbursement of all actual costs incurred, including,
271 but not limited to, attorney fees to be paid to the person
272 complained against by the complainant, if the commis-
273 sion finds that the complaint was brought or made in
274 bad faith. In addition, the aggrieved party shall have a
275 cause of action and be entitled to compensatory dam-
276 ages, punitive damages, costs and attorney fees for a
277 complaint made or brought in bad faith.

278 (v) If at any stage in the proceedings under this
279 section, it appears to an investigative panel, a hearing
280 examiner or the commission that a criminal violation
281 may have been committed by a respondent, such
282 situation shall be brought before the full commission for
283 its consideration. If, by a vote of two-thirds of the full
284 commission, it is determined that probable cause exists
285 to believe a criminal violation has occurred, it may
286 recommend to the appropriate county prosecuting
287 attorney having jurisdiction over the case that a
288 criminal investigation be commenced. Deliberations of
289 the commission with regard to a recommendation for
290 criminal investigation by a prosecuting attorney shall be
291 private and confidential. Notwithstanding any other
292 provision of this article, once a referral for criminal
293 investigation is made under the provisions of this
294 subsection, the ethics proceedings shall be held in
295 abeyance until such referral proceedings are concluded.
296 If the commission determines that a criminal violation
297 has not occurred, the commission shall remand the
298 matter to the investigating panel, the hearing examiner
299 or the commission itself as a hearing board, as the case
300 may be, for further proceedings under this article.

301 (w) The provisions of this section shall apply to
302 violations of this chapter occurring after the thirtieth
303 day of September, one thousand nine hundred eighty-
304 nine, and within one year before the filing of a
305 complaint under subsection (a) of this section or the
306 appointment of an investigative panel by the commission
307 under subsection (b) of this section.

§6B-2-5. Ethical standards for elected and appointed officials and public employees.

1 (a) *Persons subject to section*—The provisions of this
2 section apply to all elected and appointed public officials
3 and public employees, whether full or part time, in
4 state, county, municipal governments and their respec-
5 tive boards, agencies, departments, and commissions
6 and in any other regional or local governmental agency,
7 including county school boards.

8 (b) *Use of public office for private gain*—(1) A public
9 official or public employee may not intentionally use his
10 or her office or the prestige of his or her office for his
11 or her own private gain or that of another person. The
12 performance of usual and customary constituent servi-
13 ces, without compensation, does not constitute the use of
14 prestige of office for private gain.

15 (2) The Legislature, in enacting this subsection (b),
16 relating to the use of public office or public employment
17 for private gain, recognizes that there may be certain
18 public officials or public employees who bring to their
19 respective offices or employment their own unique
20 personal prestige which is based upon their intelligence,
21 education, experience, skills and abilities, or other
22 personal gifts or traits. In many cases, these persons
23 bring a personal prestige to their office or employment
24 which inures to the benefit of the state and its citizens.
25 Such persons may, in fact, be sought by the state to
26 serve in their office or employment because, through
27 their unusual gifts or traits, they bring stature and
28 recognition to their office or employment and to the
29 state itself. While the office or employment held or to
30 be held by such persons may have its own inherent
31 prestige, it would be unfair to such individuals and
32 against the best interests of the citizens of this state to
33 deny such persons the right to hold public office or be
34 publicly employed on the grounds that they would, in
35 addition to the emoluments of their office or employ-
36 ment, be in a position to benefit financially from the
37 personal prestige which otherwise inheres to them.
38 Accordingly, the commission is directed, by legislative
39 rule, to establish categories of such public officials and

40 public employees, identifying them generally by the
41 office or employment held, and offering persons who fit
42 within such categories the opportunity to apply for an
43 exemption from the application of the provisions of this
44 subsection. Such exemptions may be granted by the
45 commission, on a case-by-case basis, when it is shown
46 that: (1) The public office held or the public employment
47 engaged in is not such that it would ordinarily be
48 available or offered to a substantial number of the
49 citizens of this state; (2) the office held or the employ-
50 ment engaged in is such that it normally or specifically
51 requires a person who possesses personal prestige; and
52 (3) the person's employment contract or letter of
53 appointment provides or anticipates that the person will
54 gain financially from activities which are not a part of
55 his or her office or employment.

56 (c) *Gifts*—(1) An official or employee of the state may
57 not solicit any gift. No official or employee may
58 knowingly accept any gift, directly or indirectly, from
59 any person whom the official or employee knows or has
60 reason to know:

61 (A) Is doing or seeking to do business of any kind with
62 his or her agency;

63 (B) Is engaged in activities which are regulated or
64 controlled by his or her agency;

65 (C) Has financial interests which may be substantially
66 and materially affected, in a manner distinguishable
67 from the public generally, by the performance or
68 nonperformance of his official duties.

69 (2) Notwithstanding the provisions of subdivision
70 (1) of this subsection, a person who is a public official
71 or public employee may accept a gift described in this
72 subdivision, and there shall be a presumption that the
73 receipt of such gift does not impair the impartiality and
74 independent judgment of the person. This presumption
75 may be rebutted only by direct objective evidence that
76 the gift did impair the impartiality and independent
77 judgment of the person or that the person knew or had
78 reason to know that the gift was offered with the intent
79 to impair his or her impartiality and independent

80 judgment. The provisions of subdivision (1) of this
81 subsection do not apply to:

82 (A) Meals and beverages;

83 (B) Ceremonial gifts or awards which have insignif-
84 icant monetary value;

85 (C) Unsolicited gifts of nominal value or trivial items
86 of informational value;

87 (D) Reasonable expenses for food, travel, and lodging
88 of the official or employee for a meeting at which the
89 official or employee participates in a panel or speaking
90 engagement at the meeting;

91 (E) Gifts of tickets or free admission extended to a
92 public official or public employee to attend charitable,
93 cultural or political events, if the purpose of such gift
94 or admission is a courtesy or ceremony customarily
95 extended to the office;

96 (F) Gifts that are purely private and personal in
97 nature; or

98 (G) Gifts from relatives by blood or marriage, or a
99 member of the same household.

100 (3) The acceptance of an honorarium by an elected
101 public official is prohibited. The commission shall, by
102 legislative rule, establish guidelines for the acceptance
103 of reasonable honorariums by all other public officials
104 and public employees other than elected public officials.

105 (4) Nothing in this section shall be construed so as to
106 prohibit the giving of a lawful political contribution as
107 defined by law.

108 (5) The governor or his designee, may, in the name of
109 the state of West Virginia, accept and receive gifts from
110 any public or private source. Any such gift so obtained
111 shall become the property of the state and shall, within
112 thirty days of the receipt thereof, be registered with the
113 commission and the Department of Culture and History.

114 (6) The commission by regulation may define further
115 exemptions from this section as necessary or
116 appropriate.

117 (d) *Interests in public contracts*—(1) In addition to the
118 provisions of section fifteen, article ten, chapter sixty-
119 one of this code, no elected or appointed public official
120 or public employee or member of his or her immediate
121 family or business with which he or she is associated
122 may be a party to or have an interest in the profits or
123 benefits of a contract with the governmental body over
124 which he or she has direct authority or with which he
125 or she is employed: *Provided*, That nothing herein shall
126 be construed to prevent or make unlawful the employ-
127 ment of any person with any governmental body:
128 *Provided, however*, That nothing herein shall be
129 construed to prohibit a member of the Legislature from
130 entering into a contract with any governmental body.

131 (2) In the absence of bribery or a purpose to defraud,
132 an elected or appointed public official or public
133 employee or a member of his or her immediate family
134 or a business with which he or she is associated shall
135 not be considered as having an interest in a public
136 contract when such a person has a limited interest as
137 an owner, shareholder or creditor of the business which
138 is the contractor on the public contract involved. A
139 limited interest for the purposes of this section is an
140 interest not exceeding ten percent of the partnership or
141 the outstanding shares of a corporation or thirty
142 thousand dollars, whichever is the lesser, or an interest
143 as a creditor not exceeding ten percent of the total
144 indebtedness of a business or thirty thousand dollars,
145 whichever is the lesser.

146 (3) Where the provisions of subdivisions (1) and (2) of
147 this subsection would result in the loss of a quorum in
148 a public body or agency, in excessive cost, undue
149 hardship, or other substantial interference with the
150 operation of a state, county, municipality, county school
151 board or other governmental agency, the affected
152 governmental body or agency may make written
153 application to the ethics commission for an exemption
154 from subdivisions (1) and (2) of this subsection.

155 (e) *Confidential information*—No present or former
156 public official or employee may knowingly and improp-
157 erly disclose any confidential information acquired by

158 him or her in the course of his or her official duties nor
159 use such information to further his or her personal
160 interests or the interests of another person.

161 (f) *Prohibited representation*—No present or former
162 elected or appointed public official or public employee
163 shall during or after his or her public employment or
164 service represent a client or act in a representative
165 capacity with or without compensation on behalf of any
166 person in a contested case, rate-making proceeding,
167 license or permit application, regulation filing or other
168 specific matter which arose during his or her period of
169 public service or employment and in which he or she
170 personally participated in a decision-making, advisory
171 or staff support capacity.

172 (g) *Limitation on practice before a board, agency,*
173 *commission or department*—(1) No elected or appointed
174 public official and no full-time staff attorney or
175 accountant shall, during his or her public service or
176 public employment or for a period of six months after
177 the termination of his or her public service or public
178 employment with a governmental entity authorized to
179 hear contested cases or promulgate regulations, appear
180 in a representative capacity before the governmental
181 entity in which he or she serves or served or is or was
182 employed in the following matters:

183 (A) A contested case involving an administrative
184 sanction, action or refusal to act;

185 (B) To support or oppose a proposed regulation;

186 (C) To support or contest the issuance or denial of a
187 license or permit;

188 (D) A rate-making proceeding; and

189 (E) To influence the expenditure of public funds.

190 (2) As used in this subsection, "represent" includes
191 any formal or informal appearance before, or any
192 written or oral communication with, any public agency
193 on behalf of any person: *Provided*, That nothing
194 contained in this subsection shall prohibit, during any
195 period, a former public official or employee from being

196 retained by or employed to represent, assist, or act in
197 a representative capacity on behalf of the public agency
198 by which he or she was employed or in which he or she
199 served. Nothing in this subsection shall be construed to
200 prevent a former public official or employee from
201 representing another state, county, municipal or other
202 governmental entity before the governmental entity in
203 which he or she served or was employed within six
204 months after the termination of his or her employment
205 or service in the entity.

206 (3) A present or former public official or employee
207 may appear at anytime in a representative capacity
208 before the Legislature, a county commission, city or
209 town council or county school board in relation to the
210 consideration of a statute, budget, ordinance, rule,
211 resolution or enactment.

212 (4) Members and former members of the Legislature
213 and professional employees and former professional
214 employees of the Legislature shall be permitted to
215 appear in a representative capacity on behalf of clients
216 before any governmental agency of the state, or of
217 county or municipal governments including county
218 school boards.

219 (5) An elected or appointed public official, full-time
220 staff attorney or accountant who would be adversely
221 affected by the provisions of this subsection (g) may
222 apply to the ethics commission for an exemption from
223 the six months prohibition against appearing in a
224 representative capacity, when the person's education
225 and experience is such that the prohibition would, for
226 all practical purposes, deprive the person of the ability
227 to earn a livelihood in this state outside of the govern-
228 mental agency. The ethics commission shall by legisla-
229 tive rule establish general guidelines or standards for
230 granting an exemption or reducing the time period, but
231 shall decide each application on a case-by-case basis.

232 (h) *Seeking employment with regulated person prohi-*
233 *bited—*(1) No full-time public official or full-time public
234 employee who exercises policymaking, nonministerial or
235 regulatory authority may seek employment with, or

236 allow himself or herself to be employed by, any person
237 who is or may be regulated by the governmental body
238 which he or she serves while he or she is employed or
239 serves in the governmental agency. The term "employ-
240 ment" within the meaning of this section includes
241 professional services and other services rendered by the
242 public official or public employee whether rendered as
243 an employee or as an independent contractor.

244 (2) No person regulated by a governmental agency
245 shall offer employment to a full-time public official or
246 full-time public employee of the regulating governmen-
247 tal agency during the period of time the public official
248 or employee works or serves in such agency.

249 (3) A full-time public official or full-time public
250 employee who would be adversely affected by the
251 provisions of this subsection may apply to the ethics
252 commission for an exemption from the prohibition
253 against seeking employment with a person who is or
254 may be regulated, when the person's education and
255 experience is such that the prohibition would, for all
256 practical purposes, deprive the person of the ability to
257 earn a livelihood in this state outside of the governmen-
258 tal agency. The ethics commission shall by legislative
259 rule establish general guidelines or standards for
260 granting an exemption, but shall decide upon each
261 application on a case-by-case basis.

262 (i) *Members of the Legislature required to vote—*
263 Members of the Legislature who have asked to be
264 excused from voting or who have made inquiry as to
265 whether they should be excused from voting on a
266 particular matter and who are required by the presid-
267 ing officer of the House of Delegates or Senate of West
268 Virginia to vote under the rules of the particular house
269 shall not be guilty of any violation of ethics under the
270 provisions of this section for a vote so cast.

271 (j) *Limitations on participation in licensing and rate-*
272 *making proceedings—*No public official or employee may
273 participate within the scope of his duties as a public
274 official or employee, except through ministerial func-
275 tions as defined in section three, article one of this

276 chapter, in any license or rate-making proceeding that
277 directly affects the license or rates of any person,
278 partnership, trust, business trust, corporation, or
279 association in which the public official or employee or
280 his immediate family owns or controls more than ten
281 percent. No public official or public employee may
282 participate within the scope of his duties as a public
283 official or public employee, except through ministerial
284 functions as defined in section three, article one of this
285 chapter, in any license or rate-making proceeding that
286 directly affects the license or rates of any person to
287 whom the public official or public employee or his
288 immediate family, or a partnership, trust, business
289 trust, corporation, or association of which he or his
290 immediate family owns or controls more than ten
291 percent, has sold goods or services totaling more than
292 one thousand dollars during the preceding year, unless
293 the public official or public employee has filed a written
294 statement acknowledging such sale with the public
295 agency and the statement is entered in any public record
296 of the agency's proceedings. This subsection shall not be
297 construed to require the disclosure of clients of attorneys
298 or of patients or clients of persons licensed pursuant to
299 articles three, eight, fourteen, fourteen-a, fifteen,
300 sixteen, twenty, twenty-one or thirty-one, chapter thirty
301 of this code.

§6B-2-6. Financial disclosure statement; filing requirements.

1 (a) The requirements for filing a financial disclosure
2 statement shall become initially effective on the first day
3 of February, one thousand nine hundred ninety, for all
4 persons holding public office or employment on that
5 date and who are otherwise required to file such
6 statement under the provisions of this section. The
7 initial financial disclosure statement shall cover the
8 period from the first day of July, one thousand nine
9 hundred eighty-nine, for the period ending the thirty-
10 first day of January, one thousand nine hundred ninety.
11 Thereafter, the financial disclosure statement shall be
12 filed on the first day of February of each calendar year
13 to cover the period of the preceding calendar year,

14 except insofar as may be otherwise provided herein. The
15 following persons must file the financial disclosure
16 statement required by this section with the ethics
17 commission:

18 (1) All elected officials in this state, including, but not
19 limited to, all persons elected statewide, all county
20 elected officials, municipal elected officials in munici-
21 palities which have, by ordinance, opted to be covered
22 by the disclosure provisions of this section, all members
23 of the several county or district boards of education and
24 all county or district school board superintendents;

25 (2) All members of state boards, commissions and
26 agencies appointed by the governor; and

27 (3) Secretaries of departments, commissioners, deputy
28 commissioners, assistant commissioners, directors,
29 deputy directors, assistant directors, department heads,
30 deputy department heads and assistant department
31 heads.

32 A person who is required to file a financial disclosure
33 statement under this section by virtue of becoming an
34 elected or appointed public official whose office is
35 described in subdivisions (1), (2) or (3) of this subsec-
36 tion, and who assumes the office less than ten days
37 before a filing date established herein or who assumes
38 the office after the filing date, shall file a financial
39 disclosure statement for the previous twelve months no
40 later than thirty days after the date on which the person
41 assumes the duties of the office, unless the person has
42 filed a financial disclosure statement with the commis-
43 sion during the twelve month period before he or she
44 assumed office.

45 (b) A candidate for public office shall file a financial
46 disclosure statement for the previous twelve months
47 with the state ethics commission no later than ten days
48 after he or she files a certificate of candidacy, but in all
49 circumstances, not later than ten days prior to the
50 election, unless he or she has filed a financial disclosure
51 statement with the state ethics commission during the
52 previous twelve months.

53 The ethics commission shall file a duplicate copy of
54 the financial disclosure statement required in this
55 section in the following offices within ten days of the
56 receipt of the candidate's statement of disclosure:

57 (1) Municipal candidates in municipalities which have
58 opted, by ordinance, to be covered by the disclosure
59 provisions of this section, in the office of the clerk of the
60 municipality in which the candidate is seeking office;

61 (2) Legislative candidates in single county districts
62 and candidates for a county office or county school board
63 in the office of the clerk of the county commission of the
64 county in which the candidate is seeking office;

65 (3) Legislative candidates from multicounty districts
66 and congressional candidates in the office of the clerk
67 of the county commission of the county of the candidate's
68 residence.

69 After a ninety day period following any election, the
70 clerks who receive the financial disclosure statements of
71 candidates, may destroy or dispose of those statements
72 filed by candidates who were unsuccessful in the
73 election.

74 (c) No candidate for public office may maintain his or
75 her place on a ballot and no public official may take the
76 oath of office or enter or continue upon his or her duties
77 or receive compensation from public funds, unless he or
78 she has filed a financial disclosure statement with the
79 state ethics commission as required by the provisions of
80 this section.

81 (d) The state ethics commission may, upon request of
82 any person required to file a financial disclosure
83 statement, and for good cause shown, extend the
84 deadline for filing such statement for a reasonable
85 period of time: *Provided*, That no extension of time shall
86 be granted to a candidate who has not filed a financial
87 disclosure statement for the preceding filing period.

88 (e) No person shall fail to file a statement required by
89 this section.

90 (f) No person shall knowingly file a materially false
91 statement that is required to be filed under this section.

§6B-2-7. Financial disclosure statement; contents.

1 The financial disclosure statement required under this
2 article shall contain the following information:

3 (1) The name, residential and business addresses of
4 the person filing the statement and all names under
5 which the person does business.

6 (2) The name and address of each employer of the
7 person.

8 (3) The identification, by category, of every source of
9 income over five thousand dollars received during the
10 preceding calendar year, in his or her own name or by
11 any other person for his or her use or benefit, by the
12 person filing the statement, and a brief description of
13 the nature of the services for which the income was
14 received. This subdivision does not require a person
15 filing the statement who derives income from a business,
16 profession or occupation to disclose the individual
17 sources and items of income that constitute the gross
18 income of that business, profession or occupation.

19 (4) If the person profited or benefited in the year prior
20 to the date of filing from a contract for the sale of goods
21 or services to a state, county, municipal or other local
22 governmental agency either directly or through a
23 partnership, corporation or association in which such
24 person owned or controlled more than ten percent, the
25 person shall describe the nature of the goods or services
26 and identify the governmental agencies which pur-
27 chased the goods or services.

28 (5) Each interest group or category listed below doing
29 business in this state with which the person filing the
30 statement did business or furnished services and from
31 which the person received more than twenty percent of
32 the person's gross income during the preceding calendar
33 year. The groups or categories are electric utilities, gas
34 utilities, telephone utilities, water utilities, cable
35 television companies, interstate transportation compan-
36 ies, intrastate transportation companies, oil or gas retail
37 companies, banks, savings and loan associations, loan or

38 finance companies, manufacturing companies, surface
39 mining companies, deep mining companies, mining
40 equipment companies, chemical companies, insurance
41 companies, retail companies, beer, wine or liquor
42 companies or distributors, recreation related companies,
43 timbering companies, hospitals or other health care
44 providers, trade associations, professional associations,
45 associations of public employees or public officials,
46 counties, cities or towns, labor organizations, waste
47 disposal companies, wholesale companies, groups or
48 associations seeking to legalize gambling, advertising
49 companies, media companies, race tracks and promo-
50 tional companies.

51 (6) The names of all persons, excluding that person's
52 immediate family, parents, or grandparents residing or
53 transacting business in the state to whom the person
54 filing the statement owes, on the date of execution of this
55 statement in the aggregate in his or her own name or
56 in the name of any other person more than twenty-five
57 thousand dollars: *Provided*, That nothing herein shall
58 require the disclosure of a mortgage on the person's
59 primary and secondary residences or of automobile
60 loans on automobiles maintained for the use of the
61 person's immediate family nor shall this section require
62 the disclosure of debts which result from the ordinary
63 conduct of such person's business, profession, or
64 occupation.

65 (7) The names of all persons except immediate family
66 members, parents and grandparents residing or tran-
67 sacting business in the state (other than a demand or
68 savings account in a bank, savings and loan association,
69 credit union or building and loan association or other
70 similar depository) who owes on the date of execution
71 of this statement, more, in the aggregate, than twenty-
72 five thousand dollars to the person filing the statement,
73 either in his or her own name or to any other person
74 for his or her use or benefit. This subdivision does not
75 require the disclosure of debts owed to the person filing
76 the statement which debts result from the ordinary
77 conduct of such person's business, profession or
78 occupation.

79 (8) The source of each gift having a value of over five
80 hundred dollars received from a person having an
81 interest in a governmental activity by the person filing
82 the statement when such gift is given to the person filing
83 the statement in his or her name or by any other person
84 for his or her use or benefit during the preceding
85 calendar year, except gifts received by will or by virtue
86 of the laws of descent and distribution, or received from
87 one's spouse, child, grandchild, parents or grandparents,
88 or received by way of distribution from an inter vivos
89 or testamentary trust established by the spouse or child,
90 grandchild, or by an ancestor of the person filing the
91 statement. As used in this subdivision any series or
92 plurality of gifts which exceeds in the aggregate the
93 sum of five hundred dollars from the same source or
94 donor, either directly or indirectly, and in the same
95 calendar year, shall be regarded as a single gift in
96 excess of that aggregate amount.

**§6B-2-8. Exceptions to financial disclosure requirements
and conflicts of interest provisions.**

1 (a) Any person regulated by the provisions of this
2 article need not report the holdings of or the source of
3 income from any of the holdings of:

4 (1) any qualified blind trust; or

5 (2) a trust—

6 (A) which was not created directly by such individual,
7 his spouse, or any dependent child, and

8 (B) the holdings or sources of income of which such
9 individual, or a member of his or her immediate family
10 have no knowledge.

11 Failure to report the holdings of or the source of
12 income of any trust referred to herein in good faith
13 reliance upon this section shall not constitute a violation
14 of sections six or seven of this article.

15 (b) The provisions of subsection (d), section five of this
16 article shall not apply to holdings which are assets
17 within the trusts referred to in subsection (a) of this
18 section.

19 (c) For purposes of this section, the term "qualified
20 blind trust" includes a trust in which a regulated person
21 or immediate family has a beneficial interest in the
22 principal or income, and which meets the following
23 requirements:

24 (1) The trustee of the trust is a financial institution,
25 an attorney, a certified public accountant, a broker, or
26 an investment adviser, who (in the case of a financial
27 institution or investment company, any officer or
28 employee involved in the management or control of the
29 trust)—

30 (A) is independent of and unassociated with any
31 interested party so that the trustee cannot be controlled
32 or influenced in the administration of the trust by any
33 interested party;

34 (B) is not or has not been an employee of any
35 interested party, or any organization affiliated with any
36 interested party and is not a partner of, or involved in
37 any joint venture or other investment with, any inter-
38 ested party; and

39 (C) is not a relative of any interested party.

40 (2) Any asset transferred to the trust by an interested
41 party is free of any restriction with respect to its
42 transfer or sale unless such restriction is expressly
43 approved by the ethics commission;

44 (3) The trust instrument which establishes the trust
45 provides that—

46 (A) except to the extent provided in paragraph (F) of
47 this subdivision the trustee in the exercise of his
48 authority and discretion to manage and control the
49 assets of the trust shall not consult or notify any
50 interested party;

51 (B) the trust shall not contain any asset the holding
52 of which by an interested party is prohibited by any law
53 or regulation;

54 (C) the trustee shall promptly notify the regulated
55 person and the ethics commission when the holdings of
56 any particular asset transferred to the trust by any
57 interested party are disposed of;

58 (D) the trust tax return shall be prepared by the
59 trustee or his designee, and such return and any
60 information relating thereto (other than the trust
61 income summarized in appropriate categories necessary
62 to complete an interested party's tax return), shall not
63 be disclosed to any interested party;

64 (E) an interested party shall not receive any report on
65 the holdings and sources of income of the trust, except
66 a report at the end of each calendar quarter with respect
67 to the total cash value of the interest of the interested
68 party in the trust or the net income or loss of the trust
69 or any reports necessary to enable the interested party
70 to complete an individual tax return required by law,
71 but such report shall not identify any asset or holding;

72 (F) except for communications which solely consist of
73 requests for distribution of cash or other unspecified
74 assets of the trust, there shall be no direct or indirect
75 communication between the trustee and an interested
76 party with respect to the trust unless such communica-
77 tion is in writing and unless it relates only (i) to the
78 general financial interest and needs of the interested
79 party (including, but not limited to, an interest in
80 maximizing income or long-term capital gain), (ii) to
81 the notification of the trustee of a law or regulation
82 subsequently applicable to the reporting individual
83 which prohibits the interested party from holding an
84 asset, which notification directs that the asset not be
85 held by the trust, or (iii) to directions to the trustee to
86 sell all of an asset initially placed in the trust by an
87 interested party which in the determination of the
88 reporting individual creates a conflict of interest or the
89 appearance thereof due to the subsequent assumption of
90 duties by the reporting individual (but nothing herein
91 shall require any such direction); and

92 (G) the interested parties shall make no effort to
93 obtain information with respect to the holdings of the
94 trust, including obtaining a copy of any trust tax return
95 filed or any information relating thereto except as
96 otherwise provided in this subsection.

97 (4) The proposed trust instrument and the proposed

98 trustee is approved by the ethics commission and
99 approval shall be given if the conditions of this section
100 are met.

§6B-2-9. Special prosecutor authorized.

1 (a) If the ethics commission finds as the result of an
2 investigation of a complaint that a pattern of ethics
3 violations or criminal violations under this chapter or
4 under article five-a, chapter sixty-one of this code, exists
5 in a state, county or covered municipal government,
6 county school board or one of their respective depart-
7 ments, agencies, boards or commissions, and also finds
8 that the prosecuting attorney of the county in which the
9 violation occurred is, for some reason, unable or
10 unwilling to take appropriate action, the chairman of
11 the ethics commission may, upon a two-thirds vote of the
12 members of the ethics commission, petition the approp-
13 priate circuit court for the appointment of a special
14 prosecutor for the purpose of conducting an investiga-
15 tion to determine whether a violation of the criminal law
16 of this state has occurred.

17 (b) A special prosecutor shall have the same authority
18 as a county prosecutor to investigate and prosecute
19 persons subject to this act for criminal violations
20 committed in connection with their public office or
21 employment which constitute felonies.

22 (c) The ethics committee shall be authorized to
23 employ and assign the necessary professional and
24 clerical staff to assist any such special prosecutor in the
25 performance of his or her duties and to pay and to set
26 the compensation to be paid to a special prosecutor in
27 an amount not to exceed seventy-five dollars per hour
28 up to a maximum of fifty thousand dollars per annum.

29 (d) The special prosecutor shall be empowered to
30 make a presentment to any regularly or specially
31 impaneled grand jury in the appointing circuit court.
32 The special prosecutor shall be empowered to prosecute
33 any person indicted by such grand jury.

§6B-2-10. Violations and penalties.

1 (a) If any person violates the provisions of subsections

2 (e), (f), or (g), section five of this article, or violates the
3 provisions of subdivision (1), subsection (f), section four
4 of this article, such person, upon conviction thereof, shall
5 be guilty of a misdemeanor and shall be punished by
6 confinement in the county jail for a period not to exceed
7 six months or shall be fined not more than one thousand
8 dollars, or both such confinement and fine. If any person
9 violating the provisions of subdivision (1), subsection (f),
10 section four of this article shall be a member of the
11 commission or an employee thereof, he or she shall, upon
12 conviction, be subject to immediate removal or
13 discharge.

14 (b) If any person violates the provisions of subsection
15 (f), section six of this article by willfully and knowingly
16 filing a false financial statement, such person shall,
17 upon conviction thereof, be deemed guilty of false
18 swearing and shall be punished as provided in section
19 three, article five, chapter sixty-one of this code.

20 (c) If any person knowingly fails or refuses to file a
21 financial statement required by section six of this
22 article, such person, upon conviction thereof, shall be
23 guilty of a misdemeanor and shall be fined not less than
24 one hundred dollars nor more than one thousand dollars.

25 (d) If any complainant violates the provisions of
26 subdivision (2), subsection (f), section four, article two
27 of this chapter by knowingly and willfully disclosing any
28 information made confidential by an order of the
29 commission, he or she shall be subject to administrative
30 sanction by the commission as provided for in subsection
31 (r), section four of this article.

§6B-2-11. Termination of commission.

1 The West Virginia ethics commission shall be termi-
2 nated by the provisions of article ten, chapter four of
3 this code on the first day of July, one thousand nine
4 hundred ninety-two, unless sooner terminated or unless
5 continued or reestablished pursuant to that article.

ARTICLE 3. LOBBYISTS.

§6B-3-1. Definitions.

§6B-3-2. Registration of lobbyists.

- \$6B-3-3. Photograph and information-booklet-publication.
- \$6B-3-4. Reporting by lobbyists.
- \$6B-3-5. Grass roots lobbying campaigns.
- \$6B-3-6. Employment of unregistered persons.
- \$6B-3-7. Duties of lobbyists.
- \$6B-3-8. Limitation on persons lobbying in legislative chambers.
- \$6B-3-9. Penalties.
- \$6B-3-10. Provisions may be adopted by local governments.

\$6B-3-1. Definitions.

- 1 As used in this article, unless the context in which
- 2 used clearly indicates otherwise:
- 3 (1) "Compensation" means money or any other thing
- 4 of value received or to be received by a lobbyist from
- 5 an employer for services rendered.
- 6 (2) "Employer" or "lobbyist's employer" means any
- 7 person who employs or retains a lobbyist.
- 8 (3) "Expenditure" means payment, distribution, loan,
- 9 advance deposit, reimbursement, or gift of money, real
- 10 or personal property or any other thing of value; or a
- 11 contract, promise, or agreement, whether or not legally
- 12 enforceable.
- 13 (4) "Government officer or employee" means a
- 14 member of the Legislature, a legislative employee, the
- 15 governor and other members of the board of public
- 16 works, heads of executive departments, and any other
- 17 public officer or public employee under the legislative
- 18 or executive branch of state government who is empo-
- 19 wered or authorized to make policy and perform non-
- 20 ministerial functions. In the case of elected offices
- 21 included herein, the term "government officer or
- 22 employee" shall include candidates who have been
- 23 elected but who have not yet assumed office.
- 24 (5) "Legislation" means bills, resolutions, motions,
- 25 amendments, nominations, and other matters pending
- 26 or proposed in either house of the Legislature, and
- 27 includes any other matters that may be the subject of
- 28 action by either house or any committee of the Legis-
- 29 lature and all bills or resolutions that, having passed
- 30 both houses, are pending approval or veto by the
- 31 governor.

32 (6) "Lobbying" or "lobbying activity" means the act of
33 communicating with a government officer or employee
34 to promote, advocate or oppose or otherwise attempt to
35 influence:

36 (i) The passage or defeat or the executive approval or
37 veto of any legislation which may be considered by the
38 Legislature of this state; or

39 (ii) The adoption or rejection of any rule, regulation,
40 legislative rule, standard, rate, fee, or other delegated
41 legislative or quasi-legislative action to be taken or
42 withheld by any executive department.

43 (7)(A) "Lobbyist" means a person who, through
44 communication with a government officer or employee,
45 promotes, advocates or opposes or otherwise attempts to
46 influence:

47 (i) The passage or defeat or the executive approval or
48 veto of any legislation which may be considered by the
49 Legislature of this state; or

50 (ii) The adoption or rejection of any rule, regulation,
51 legislative rule, standard, rate, fee, or other delegated
52 legislative or quasi-legislative action to be taken or
53 withheld by any executive department.

54 (B) The term "lobbyist" shall not include the following
55 persons, who shall be exempt from the registration and
56 reporting requirements set forth in this article, unless
57 such persons engage in activities which would otherwise
58 subject them to the registration and reporting
59 requirements:

60 (i) Persons who limit their lobbying activities to
61 appearing before public sessions of committees of the
62 Legislature, or public hearings of state agencies, are
63 exempt.

64 (ii) Persons who engage in news or feature reporting
65 activities and editorial comment as working members of
66 the press, radio, or television, and persons who publish
67 or disseminate such news, features or editorial comment
68 through a newspaper, book, regularly published period-
69 ical, radio station, or television station, are exempt.

70 (iii) Persons who lobby without compensation or other
71 consideration for acting as lobbyists, when such persons
72 make no expenditure for or on behalf of any government
73 officer or employee in connection with such lobbying,
74 are exempt. The exemption contained in this subpara-
75 graph (iii) is intended to permit and encourage citizens
76 of this state to exercise their constitutional rights to
77 assemble in a peaceable manner, consult for the common
78 good, instruct their representatives, and apply for a
79 redress of grievances. Accordingly, such persons may
80 lobby without incurring any registration or reporting
81 obligation under this article. Any person exempt under
82 this subparagraph (iii) may at his or her option register
83 and report under this article.

84 (iv) Persons who lobby on behalf of a nonprofit
85 organization with regard to legislation, without compen-
86 sation, and who restrict their lobbying activities to no
87 more than twenty days or parts thereof during any
88 regular session of the Legislature, are exempt. The
89 commission may promulgate a legislative rule to require
90 registration and reporting by persons who would
91 otherwise be exempt under this subparagraph, if it
92 determines that such rule is necessary to prevent
93 frustration of the purposes of this article. Any person
94 exempt under this subparagraph may at his or her
95 option register and report under this article.

96 (v) The governor, members of the governor's staff,
97 members of the board of public works, officers and
98 employees of the executive branch who communicate
99 with a member of the Legislature on the request of that
100 member, or who communicate with the Legislature,
101 through the proper official channels, requests for
102 legislative action or appropriations which are deemed
103 necessary for the efficient conduct of the public business
104 or which are made in the proper performance of their
105 official duties, are exempt.

106 (vi) Members of the Legislature are exempt.

107 (vii) Persons employed by the Legislature for the
108 purpose of aiding in the preparation or enactment of

109 legislation or the performance of legislative duties are
110 exempt.

111 (viii) Persons rendering professional services in
112 drafting proposed legislation or in advising or rendering
113 opinions to clients as to the construction and effect of
114 proposed or pending legislation, are exempt.

115 (8) "Person" means any individual, partnership, trust,
116 estate, business trust, association, or corporation; any
117 department, commission, board, publicly supported
118 college or university, division, institution, bureau, or any
119 other instrumentality of the state; or any county,
120 municipal corporation, school district, or any other
121 political subdivision of the state.

§6B-3-2. Registration of lobbyists.

1 (a) Before engaging in any lobbying activity, or
2 within thirty days after being employed as a lobbyist,
3 whichever occurs first, a lobbyist shall register with the
4 ethics commission by filing a lobbyist registration
5 statement, signed under oath or affirmation. The
6 registration statement shall contain such information
7 and be in such form as the ethics commission may
8 prescribe by legislative rule, including, but not limited to,
9 to, the following information:

10 (1) The registrant's name, business address, telephone
11 numbers and any temporary residential and business
12 addresses and telephone numbers used or to be used by
13 the registrant while lobbying during a legislative
14 session;

15 (2) The name, address and occupation or business of
16 the registrant's employer;

17 (3) A statement as to whether the registrant is
18 employed or retained by his or her employer solely as
19 a lobbyist or is a regular employee performing services
20 for the employer which include, but are not limited to,
21 lobbying;

22 (4) A statement as to whether the registrant is
23 employed or retained by his or her employer under any
24 agreement, arrangement or understanding according to

25 which the registrant's compensation, or any portion
26 thereof, is or will be contingent upon the success of his
27 or her lobbying activity;

28 (5) The general subject or subjects, if known, on
29 which the registrant will lobby or employ some other
30 person to lobby in a manner which requires registration
31 under this article;

32 (6) An appended written authorization from each of
33 the lobbyist's employers confirming the lobbyist's
34 employment and the subjects on which the employer is
35 to be represented.

36 (b) A registrant who lobbys with regard to matters
37 before the Legislature must file duplicate copies of the
38 lobbyist's registration statement required by subsections
39 (a) or (d) of this section with the Clerk of the Senate and
40 the Clerk of the House of Delegates contemporaneously
41 with the filing with the ethics commission before
42 engaging in any lobbying activity.

43 (c) Any lobbyist who receives or is to receive compen-
44 sation from more than one person for services as a
45 lobbyist shall file a separate notice of representation
46 with respect to each person compensating him or her for
47 services performed as a lobbyist. When a lobbyist whose
48 fee for lobbying with respect to the same subject is to
49 be paid or contributed by more than one person, then
50 such lobbyist may file a single statement, in which he
51 shall detail the name, business address and occupation
52 of each person so paying or contributing.

53 (d) Whenever a change, modification, or termination
54 of the lobbyist's employment occurs, the lobbyist shall,
55 within one week of such change, modification or
56 termination, furnish full information regarding the
57 same by filing with the commission an amended
58 registration statement.

59 (e) Each lobbyist who has registered shall file a new
60 registration statement, revised as appropriate, on the
61 second Monday in January of each odd-numbered year,
62 and failure to do so shall terminate his registration.
63 Until such registration is renewed, the person may not

64 engage in lobbying activities unless he or she is
65 otherwise exempt under paragraph (B), subdivision (7),
66 section one of this article.

§6B-3-3. Photograph and information-booklet-publication.

1 Each lobbyist shall, at the time he or she registers,
2 submit to the commission a recent photograph of the
3 lobbyist of a size and format as determined by rule of
4 the commission, together with the name of the lobbyist's
5 employer, a brief biographical description, and any
6 other information the lobbyist may wish to submit, not
7 to exceed fifty words in length. Such photograph and
8 information shall be published at least annually in a
9 booklet form by the commission for distribution to
10 government officers or employees, lobbyists, and to the
11 public. The method of distribution shall be in the
12 discretion of the commission, which shall not be
13 required to compile and maintain a distribution list of
14 all persons who may be entitled to receive such booklet.
15 Each lobbyist, upon registering, shall pay a fee of
16 twenty dollars to the commission to help defray the costs
17 of preparing such booklet.

§6B-3-4. Reporting by lobbyists.

1 (a) A lobbyist shall file with the commission reports
2 of his lobbying activities, signed under oath or affirma-
3 tion by the lobbyist. Lobbyists who are required under
4 this article to file copies of their registration statements
5 with the clerks of the respective houses of the Legisla-
6 ture shall also contemporaneously file copies of all
7 reports required under this section with the clerks. The
8 reports shall be made in the form and manner pres-
9 cribed by legislative rule of the commission. Such
10 reports shall be filed as follows:

11 (1) On or before the second Monday in January of
12 each year, a lobbyist shall file an annual report of all
13 lobbying activities which he or she engaged in during
14 the preceding calendar year; and

15 (2) If a lobbyist engages in lobbying with respect to
16 legislation, then:

17 (A) Between the fortieth and forty-fifth days of any

18 regular session of the Legislature in which any such
19 lobbying occurred, the lobbyist shall file a report
20 describing all of his or her lobbying activities which
21 occurred since the beginning of the calendar year; and

22 (B) Within twenty-one days after the adjournment
23 *sine die* of any regular or extraordinary session of the
24 Legislature in which any such lobbying occurred, the
25 lobbyist shall file a report describing all of his or her
26 lobbying activities which occurred since the beginning
27 of the calendar year or since the filing of the last report
28 required by this section, whichever is later.

29 (b) (1) Except as otherwise provided in this section,
30 each report filed by a lobbyist shall show the total
31 amount of all expenditures for lobbying made or
32 incurred by such lobbyist, or on behalf of such lobbyist
33 by the lobbyist's employer, during the period covered by
34 the report. The report shall also show subtotals segre-
35 gated according to financial category, including meals
36 and beverages; living accommodations; advertising;
37 travel; contributions; gifts to government officers or
38 employees or to members of the immediate family of
39 such persons; and other expenses or services.

40 (2) Lobbyists are not required to report the following:

41 (A) Unreimbursed personal living and travel ex-
42 penses not incurred directly for lobbying;

43 (B) Any expenses incurred for his or her own living
44 accommodations;

45 (C) Any expenses incurred for his or her own travel
46 to and from public meetings or hearings of the legisla-
47 tive and executive branches;

48 (D) Any expenses incurred for telephone, and any
49 office expenses, including rent and salaries and wages
50 paid for staff and secretarial assistance; and

51 (E) Separate expenditures to or on behalf of a
52 government officer or employee in an amount of less
53 than five dollars.

54 (c) If a lobbyist is employed by more than one
55 employer, the report shall show the proportionate

56 amount of such expenditures in each category incurred
57 on behalf of each of his employers.

58 (d) The report shall describe the subject matter of the
59 lobbying activities in which the lobbyist has been
60 engaged during the reporting period.

61 (e) If, during the period covered by the report, the
62 lobbyist made expenditures, other than for travel, food,
63 lodging and entertainment governed by subsection (f) of
64 this section, which expenditures total more than five
65 hundred dollars to or on behalf of any particular
66 government officer or employee, the lobbyist shall
67 report the name of the government officer or employee
68 to whom or on whose behalf the expenditures were
69 made, the total amount of the expenditures, and the
70 subject matter of the lobbying activity, if any. Under
71 this subsection (e), no portion of the amount of an
72 expenditure for a dinner, party, or other function
73 sponsored by a lobbyist or a lobbyist's employer need be
74 attributed to or counted toward the reporting amount
75 of five hundred dollars for a particular government
76 officer or employee who attends such function if the
77 sponsor has invited to the function all the members of
78 (1) the Legislature, (2) either house of the Legislature,
79 (3) a standing or select committee of either house, or
80 (4) a joint committee of the two houses of the Legisla-
81 ture. However, the amount spent for such function shall
82 be added to other expenditures for the purpose of
83 determining the total amount of expenditures reported
84 under subsection (b) of this section.

85 (f) If, during the period covered by the report, the
86 lobbyist made expenditures for travel, food, lodging, and
87 scheduled entertainment totaling more than five
88 hundred dollars for or on behalf of a particular
89 government officer or employee in return for the
90 participation of the government officer or employee in
91 a panel or speaking engagement at the meeting, the
92 lobbyist shall report the name of the government officer
93 or employee to whom or on whose behalf the expendi-
94 tures were made and the total amount of the
95 expenditures.

96 (g) Such other information relevant to lobbying
97 activities as the commission shall by legislative rule
98 prescribe. Information supporting such activities as are
99 required to be reported is subject to audit by the
100 commission.

§6B-3-5. Grass roots lobbying campaigns.

1 (1) Any person who has made expenditures, not
2 required to be reported under other sections of this
3 chapter, exceeding five hundred dollars in the aggre-
4 gate within any three-month period or exceeding two
5 hundred dollars in the aggregate within any one-month
6 period in presenting a program addressed to the public,
7 a substantial portion of which is intended, designed or
8 calculated primarily to influence legislation, shall be
9 required to register and report, as provided in subsec-
10 tion (2) of this section, as a sponsor of a grass roots
11 lobbying campaign.

12 (2) Within thirty days after becoming a sponsor of a
13 grass roots lobbying campaign, the sponsor shall
14 register by filing with the ethics commission a registra-
15 tion statement, in such detail as the commission shall
16 prescribe, showing:

17 (a) The sponsor's name, address and business or
18 occupation, and, if the sponsor is not an individual, the
19 names, addresses, and titles of the controlling persons
20 responsible for managing the sponsor's affairs;

21 (b) The names, addresses and business or occupation
22 of all persons organizing and managing the campaign,
23 or hired to assist the campaign, including any public
24 relations or advertising firms participating in the
25 campaign, and the terms of compensation for all such
26 persons;

27 (c) The names and addresses of each person contribut-
28 ing twenty-five dollars or more to the campaign and the
29 aggregate amount contributed;

30 (d) The purpose of the campaign, including the
31 specific legislation, rules, rates, standards or proposals
32 that are the subject matter of the campaign;

33 (e) The totals of all expenditures made or incurred to
34 date on behalf of the campaign, which totals shall be
35 segregated according to financial category, including,
36 but not limited to, the following: Advertising, segre-
37 gated by media, and, in the case of large expenditures
38 (as provided by legislative rule of the commission), by
39 outlet; contributions; entertainment, including meals
40 and beverages; office expenses, including rent and the
41 salaries and wages paid for staff and secretarial
42 assistance, or the proportionate amount thereof paid or
43 incurred for lobbying campaign activities; consultants;
44 and printing and mailing expenses.

45 (3) Every sponsor who has registered under this
46 section shall file reports with the commission, which
47 reports shall be filed for the same time periods required
48 for the filing of lobbyists' reports under the provisions
49 of section four of this article.

50 (4) When the campaign has been terminated, the
51 sponsor shall file a notice of termination with the final
52 monthly report, which notice shall state the totals of all
53 contributions and expenditures made on behalf of the
54 campaign, in the same manner as provided for in the
55 registration statement.

§6B-3-6. Employment of unregistered persons.

1 It shall be a violation of this chapter for any person
2 to employ for pay or any consideration, or pay or agree
3 to pay any consideration to, a person to lobby who is not
4 registered under this chapter except upon condition that
5 such person register as a lobbyist as provided by this
6 chapter, and such person does in fact so register as soon
7 as practicable.

§6B-3-7. Duties of lobbyists.

1 A person required to register as a lobbyist under this
2 chapter shall also have the following obligations, the
3 violation of which shall constitute cause for revocation
4 of his registration, and may subject such person, and
5 such person's employer, if such employer aids, abets,
6 ratifies, or confirms any such act, to other civil
7 liabilities, as provided by this chapter.

8 (1) Such persons shall obtain and preserve all ac-
9 counts, bills, receipts, books, papers and documents
10 necessary to substantiate the financial reports required
11 to be made under this article for a period of at least five
12 years from the date of the filing of the statement
13 containing such items, which accounts, bills, receipts,
14 books, papers, and documents shall be made available
15 for inspection by the commission at any time: *Provided*,
16 That if a lobbyist is required under the terms of his
17 employment contract to turn any records over to his
18 employer, responsibility for the preservation of such
19 records under this subsection shall rest with such
20 employer.

21 (2) In addition, a person required to register as a
22 lobbyist shall not:

23 (A) Engage in any activity as a lobbyist before
24 registering as such;

25 (B) Knowingly deceive or attempt to deceive any
26 government officer or employee as to any fact pertaining
27 to a matter which is the subject of lobbying activity;

28 (C) Cause or influence the introduction of any legis-
29 lation for the purpose of thereafter being employed to
30 secure its defeat;

31 (D) Exercise any undue influence, extortion, or
32 unlawful retaliation upon any government officer or
33 employee by reason of such government officer or
34 employee's position with respect to, or his vote upon, any
35 matter which is the subject of lobbying activity;

36 (E) Exercise undue influence upon any legislator or
37 other privately employed government officer or em-
38 ployee through communications with such person's
39 employer;

40 (F) Give a gift to any government officer or employee
41 in excess of or in violation of any limitations on gifts set
42 forth in subsection (c), section five, article two of this
43 chapter, or give any gift, whether lawful or unlawful,
44 to a government officer or employee without such
45 government officer or employee's knowledge and
46 consent.

§6B-3-8. Limitation on persons lobbying in legislative chambers.

1 Former legislators and other persons having the
2 privilege of the floor are prohibited from lobbying upon
3 the floor of either house of the Legislature or the foyer
4 thereof while such house is in session.

§6B-3-9. Penalties.

1 (a) A person who is required under the provisions of
2 this article to file a statement or report is guilty of false
3 swearing when such person willfully and knowingly,
4 under oath or affirmation, files a false statement or
5 report concerning a matter or thing material. Any
6 person who violates the provisions of this subsection (a)
7 shall be guilty of a misdemeanor, and upon conviction
8 thereof shall be fined or fined and confined in accor-
9 dance with the provisions of section three, article five,
10 chapter sixty-one of this code.

11 (b) A person who is subject to the registration and
12 reporting requirements of this article and who fails or
13 refuses to register or who fails or refuses to file a
14 required statement or report or who otherwise violates
15 the provisions of this article may be the subject of a
16 complaint filed with the ethics commission and may be
17 proceeded against in the same manner and to the same
18 ends as a public officer or public employee under the
19 provisions of this chapter.

20 (c) A person who willfully and knowingly files a false
21 report under the provisions of this article is liable in a
22 civil action to any government officer or employee who
23 sustains damage as a result of the filing or publication
24 of the report.

§6B-3-10. Provisions may be adopted by local governments.

1 An incorporated municipality may enact lobbyist
2 regulation provisions substantially similar to the
3 provisions of this article which may be modified to the
4 extent necessary to make the provisions relevant to that
5 jurisdiction and which may be further modified to the
6 extent deemed necessary and appropriate by and for
7 that jurisdiction.

CHAPTER 2

(Com. Sub. for S. B. 1—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed January 31, 1989; in effect March 1, 1989. Approved by the Governor.]

AN ACT to repeal sections two-a, two-b, two-c, two-g, two-h, two-i, two-j, two-k and two-l, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections three-a and eleven, article fifteen of said chapter; to amend and reenact sections one, two, two-d, two-e and two-m, article thirteen, chapter eleven of said code; to further amend said article thirteen by adding thereto a new section, designated section two-n; to amend and reenact section three, article thirteen-a of said chapter; to amend and reenact sections two, three and nine, article fifteen of said chapter; to further amend said article fifteen by adding thereto two new sections, designated sections eight-a and thirty-three; to amend and reenact section two, article fifteen-a of said chapter; to further amend said article fifteen-a by adding thereto a new section, designated section twenty-nine; and to amend and reenact sections six and seventeen, article twenty-three of said chapter, all relating to the Fiscal Responsibility Act of 1989; amending and reenacting existing provisions of the business and occupation tax, the severance tax, the consumers sales and service tax, the use tax and the business franchise tax; eliminating the expiration of the temporary one cent increase in the consumers sales and service tax and the use tax, making the increase in these taxes permanent, preserving the dedication of certain additional revenues therefrom for repayment of pneumoconiosis fund debt; defining terms used in the business and occupation tax; imposing the business and occupation tax, beginning the first day of March, one thousand nine hundred eighty-nine, upon the service of gas storage and prescribing the rate thereof and due dates of installment payments; setting forth an alternative method of calculating the business and occupation tax due from electric power and light

companies and from generators of electric power; imposing such tax based on the number of kilowatt hours of electric power generated or sold within this state; specifying different rates of tax and exempting from tax kilowatt hours of electric power sold for certain purposes; requiring tax to be computed based on current law and under the alternative method, with liability for tax being the greater of the two; increasing the severance tax rates effective the first day of March, one thousand nine hundred eighty-nine; eliminating the exemption from the consumers sales and service tax and use tax for sales of property or services to persons in the business of contracting when such property or services are directly used in the activities of contracting; eliminating references to contracting in the definition of "directly used and consumed" for purposes of the consumers sales and service tax and the use tax; providing that property installed, fixed or incorporated into realty by a contractor is not subject to the consumers sales and service tax exemption for resale; removing the sales tax exemption for food intended for human consumption; providing an exemption mandated under Title forty-two, United States Code section one thousand seven hundred eighty-six; providing transition rules; making the effective date for all such changes to the consumers sales and service and use tax laws the first day of March, one thousand nine hundred eighty-nine; eliminating the credit against the business franchise tax for the amount of tax that would be attributable to the portion of the business franchise tax base giving rise to a severance tax liability for taxable years ending after the twenty-eighth day of February, one thousand nine hundred eighty-nine, prorating the credit as to months before the first day of March, one thousand nine hundred eighty-nine; increasing the rate of the business franchise tax for taxable years beginning on or after specified date; permitting proration of tax when taxable year is less than twelve months; providing for a minimum tax; clarifying that charitable organizations and churches may continue to be exempt from sales and use tax on purchases of food for meals for which no charge is made; and providing that certain

sales to persons engaged in contracting or subcontracting pursuant to a written contract with this state, a political subdivision thereof or a public corporation are exempt from the sales and use tax in certain instances.

Be it enacted by the Legislature of West Virginia:

That sections two-a, two-b, two-c, two-g, two-h, two-i, two-j, two-k and two-l, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three-a and eleven, article fifteen of said chapter eleven be repealed; that sections one, two, two-d, two-e and two-m, article thirteen, chapter eleven of said code be amended and reenacted; that said article thirteen be further amended by adding thereto a new section, designated section two-n; that section three, article thirteen-a of said chapter be amended and reenacted; that sections two, three and nine, article fifteen of said chapter be amended and reenacted; that said article fifteen be further amended by adding thereto two new sections, designated sections eight-a and thirty-three; that section two, article fifteen-a of said chapter be amended and reenacted; that said article fifteen-a be further amended by adding thereto a new section, designated section twenty-nine; and that sections six and seventeen, article twenty-three of said chapter be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

Article

- 13. Business and Occupation Tax.
- 13A. Severance Taxes.
- 15. Consumers Sales Tax.
- 15A. Use Tax.
- 23. Business Franchise Tax.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

- §11-13-1. Definitions.
- §11-13-2. Imposition of privilege tax.
- §11-13-2d. Public service or utility business.
- §11-13-2e. Business of gas storage; effective date.
- §11-13-2m. Business of generating or producing electric power; exception: rates.
- §11-13-2n. Business of generating or producing or selling electric power; exemptions; rates.

§11-13-1. Definitions.

1 (a) *General*.—When used in this article, or in the
2 administration of this article, the terms defined in
3 subsection (b) shall have the meanings ascribed to them
4 by this section, unless a different meaning is clearly
5 required by either the context in which the term is used
6 or by specific definition.

7 (b) *Terms defined*.

8 (1) "Person" or the term "company," herein used
9 interchangeably, includes any individual, firm, copart-
10 nership, joint adventure, association, corporation, trust
11 or any other group or combination acting as a unit, and
12 the plural as well as the singular number, unless the
13 intention to give a more limited meaning is disclosed by
14 the context.

15 (2) "Sale," "sales" or "selling" includes any transfer of
16 or title to property or electricity, whether for money or
17 in exchange for other property.

18 (3) "Taxpayer" means any person liable for any tax
19 hereunder.

20 (4) "Gross income" means the gross receipts of the
21 taxpayer, received as compensation for personal services
22 and the gross receipts of the taxpayer derived from
23 trade, business, commerce or sales and the value
24 proceeding or accruing from the sale of tangible
25 property (real or personal), or service, or both, and all
26 receipts by reason of the investment of the capital of the
27 business engaged in, including rentals, royalties, fees,
28 reimbursed costs or expenses or other emoluments
29 however designated and including all interest, carrying
30 charges, fees or other like income, however denomi-
31 nated, derived by the taxpayer from repetitive carrying
32 of accounts, in the regular course and conduct of his
33 business, and extension of credit in connection with the
34 sale of any tangible personal property or service, and
35 without any deductions on account of the cost of
36 property sold, the cost of materials used, labor costs,
37 taxes, royalties paid in cash or in kind or otherwise,
38 interest or discount paid or any other expenses what-
39 soever.

40 (5) "Gross proceeds of sales" means the value, whether
41 in money or other property, actually proceeding from
42 the sale of tangible property without any deduction on
43 account of the cost of property sold or expenses of any
44 kind.

45 (6) "Business" shall include all activities engaged in
46 or caused to be engaged in with the object of gain or
47 economic benefit, either direct or indirect. "Business"
48 shall include the rendering of gas storage service by any
49 person for the gain or economic benefit of any person,
50 including, but not limited to, the storage operator,
51 whether or not incident to any other business activity.

52 (7) "Gas" means either natural gas unmixed, or any
53 mixture of natural and artificial gas or any other gas.

54 (8) "Storage reservoir" means that portion of any
55 subterranean sand or rock stratum or strata into which
56 gas is or may be injected for the purpose of storage.

57 (9) "Gas storage service" means the injection of gas
58 into a storage reservoir, the storage of gas for any period
59 of time in a storage reservoir, or the withdrawal of gas
60 from a storage reservoir. Such gas may be owned by the
61 storage operator or any other person.

62 (10) "Gas storage operator" means any person who
63 operates a storage reservoir or provides a storage
64 service as defined herein, either as owner or lessee.

65 (11) "Month" or "tax month" means the calendar
66 month.

67 (12) "Dekatherm" means the thermal energy unit
68 equal to one million British thermal units (BTU's) or the
69 equivalent of one thousand cubic feet of gas having a
70 heating content of one thousand BTU's per cubic foot.

71 (13) "Taxable year" means the calendar year, or the
72 fiscal year ending during such calendar year, upon the
73 basis of which tax liability is computed under this
74 article. "Taxable year" means, in case of a return made
75 for a fractional part of a year under the provisions of
76 this article, or under regulations promulgated by the tax
77 commissioner, the period for which such return is made.

§11-13-2. Imposition of privilege tax.

1 (a) *Periods before July 1, 1987.*—For taxable years or
2 months thereof ending prior to the first day of July, one
3 thousand nine hundred eighty-seven, there is hereby
4 levied and shall be collected annual privilege taxes
5 against the persons, on account of the business and other
6 activities, and in the amounts to be determined by the
7 application of rates against values or gross income as set
8 forth in sections two-a to two-m, both inclusive, of this
9 article and the application of the surtax rate against
10 gross income as set forth in section two-k: *Provided,*
11 That on the first day of July, one thousand nine hundred
12 eighty-five, the taxes imposed by this section, at the
13 rates set forth in sections two-b through two-m, both
14 inclusive, of this article, and in effect on the first day
15 of January, one thousand nine hundred eighty-five,
16 exclusive of any surtaxes, shall be reduced by five
17 percent for taxable months beginning on and after said
18 first day of July: *Provided, however,* That on and after
19 the first day of July, one thousand nine hundred eighty-
20 five, the rate of tax under section two-b of this article
21 shall not be less than eight tenths of one percent:
22 *Provided further,* That there shall be no such reduction
23 of the rates set forth in section two-a or two-l of this
24 article.

25 (b) *Periods after June 30, 1987.*—For taxable years or
26 months beginning after the thirtieth day of June, one
27 thousand nine hundred eighty-seven, there is hereby
28 levied and shall be collected annual privilege taxes
29 against the persons, on account of the business and other
30 activities, and in the amount to be determined by the
31 application of rates against values or gross income as set
32 forth in sections two-d and two-m of this article:
33 *Provided,* That on and after the first day of July, one
34 thousand nine hundred eighty-seven, the rates applica-
35 ble to the privileges exercised in sections two-d and two-
36 m of this article shall be restored and returned to those
37 which were in effect as to such privileges on the first
38 day of January, one thousand nine hundred eighty-five:
39 *Provided, however,* That for taxable months or taxable
40 years beginning after the twenty-eighth day of Febru-

41 any, one thousand nine hundred eighty-nine, there is
42 hereby levied and shall be collected annual privilege
43 taxes against the persons, on account of the business and
44 other activities, and in the amount to be determined by
45 the application of rates against the measure of the tax
46 as set forth in sections two-d, two-e, two-m and two-n
47 of this article.

48 (c) If any person liable for any tax under section two-
49 m shall ship or transport his products or any part
50 thereof out of the state without making sale of such
51 products, the value of the products in the condition or
52 form in which they exist immediately before transpor-
53 tation out of the state shall be the basis for the
54 assessment of the tax imposed in such section, except in
55 those instances in which another measure of the tax is
56 expressly provided. The tax commissioner shall pre-
57 scribe equitable and uniform rules for ascertaining such
58 value.

59 (d) In determining value, however, as regards sales
60 from one to another of affiliated companies or persons,
61 or under other circumstances where the relation
62 between the buyer and seller is such that the gross
63 proceeds from the sale are not indicative of the true
64 value of the subject matter of the sale, the tax commis-
65 sioner shall prescribe uniform and equitable rules for
66 determining the value upon which such privilege tax
67 shall be levied, corresponding as nearly as possible to
68 the gross proceeds from the sale of similar products of
69 like quality or character where no common interest
70 exists between the buyer and seller but the circumstan-
71 ces and conditions are otherwise similar.

§11-13-2d. Public service or utility business.

1 (a) Upon any person engaging or continuing within
2 this state in any public service or utility business, except
3 railroad, railroad car, express, pipeline, telephone and
4 telegraph companies, water carriers by steamboat or
5 steamship and motor carriers, the tax imposed by
6 section two of this article shall be equal to the gross
7 income of the business derived from such activity or
8 activities multiplied by the respective rates as follows:

9 (1) Street and interurban and electric railways, one
10 and four-tenths percent;

11 (2) Water companies, four and four-tenths percent,
12 except as to income received by municipally owned
13 water plants;

14 (3) Electric light and power companies, four percent
15 on sales and demand charges for domestic purposes and
16 commercial lighting and four percent on sales and
17 demand charges for all other purposes, and except as
18 to income received by municipally owned plants produc-
19 ing or purchasing electricity and distributing same:
20 *Provided*, That electric light and power companies
21 which engage in the supplying of public service but
22 which do not generate or produce in this state the
23 electric power they supply shall be taxed on the gross
24 income derived from sales of power which they do not
25 generate in this state at the rate of three percent on sales
26 and demand charges for domestic purposes and com-
27 mercial lighting and three percent on sales and demand
28 charges for all other purposes, except as to income
29 received by municipally owned plants: *Provided*,
30 *however*, That the sale of electric power under this
31 section shall be taxed at the rate of two percent on that
32 portion of the gross proceeds derived from the sale of
33 electric power to a plant location of a customer engaged
34 in a manufacturing activity, if the contract demand at
35 such plant location exceeds two hundred thousand
36 kilowatts per hour per year, or if the usage of such plant
37 location exceeds two hundred thousand kilowatts per
38 hour in a year: *Provided further*, That the sale of electric
39 power under this section shall be exempt from the tax
40 imposed by this section and section two of this article
41 if it is separately metered and consumed in an electro-
42 lytic process for the manufacture of chlorine in this
43 state, or is separately metered and consumed in the
44 manufacture of ferroalloy in this state, and the rate
45 reduction herein provided to the taxpayer shall be
46 passed on to the manufacturer of the chlorine or
47 ferroalloy. As used in this section, the term "ferroalloy"
48 means any of various alloys of iron and one or more
49 other elements used as a raw material in the production

50 of steel: *And provided further*, That the term does not
51 include the final production of steel;

52 (4) Natural gas companies, four and twenty-nine
53 hundredths percent on the gross income: *Provided*, That
54 the sale of natural gas under this section shall be exempt
55 from the tax imposed by this section and section two of
56 this article to the extent that the natural gas is
57 separately metered and is gas from which the purchaser
58 derives hydrogen and carbon monoxide for use in the
59 manufacture of chemicals in this state, and the full
60 economic benefit of the exception herein provided to the
61 taxpayer shall be passed on to such purchaser of the
62 natural gas: *Provided, however*, That there shall be no
63 exemption for the sale of any natural gas from which
64 the purchaser derives carbon monoxide or hydrogen for
65 the purpose of resale;

66 (5) Toll bridge companies, four and twenty-nine
67 hundredths percent; and

68 (6) Upon all other public service or utility business,
69 two and eighty-six hundredths percent.

70 (b) The measure of this tax shall not include gross
71 income derived from commerce between this state and
72 other states of the United States or between this state
73 and foreign countries. The measure of the tax under this
74 section shall include only gross income received from the
75 supplying of public service. The gross income of the
76 taxpayer from any other activity shall be included in the
77 measure of the tax imposed upon such other activity by
78 the appropriate section or sections of this article.

79 (c) Beginning the first day of March, one thousand
80 nine hundred eighty-nine, electric light and power
81 companies shall determine their liability for payment of
82 tax under this section and sections two-m and two-n of
83 this article. If for taxable months beginning on or after
84 the first day of March, one thousand nine hundred
85 eighty-nine, liability for tax under section two-n of this
86 article is equal to or greater than the sum of the power
87 company's liability for payment of tax under paragraph
88 (3), subsection (a) of this section and section two-m of
89 this article, then the company shall pay the tax due

90 under section two-n of this article and not the tax due
91 under paragraph (3), subsection (a) of this section and
92 section two-m of this article. If tax liability under
93 section two-n is less, then tax shall be paid under
94 paragraph (3), subsection (a) of this section and section
95 two-m of this article and the tax due under section two-
96 n shall not be paid. The provisions of paragraph (3),
97 subsection (a) of this section shall expire and become
98 null and void for taxable years beginning on or after the
99 first day of January, one thousand nine hundred ninety-
100 eight.

§11-13-2e. Business of gas storage; effective date.

1 (a) *Rate of tax.*—Upon every person engaging or
2 continuing within this state in any gas storage business
3 utilizing one or more gas storage reservoirs located
4 within this state, the tax imposed by section two of this
5 article shall be equal to five cents multiplied by the sum
6 of (1) the number of dekatherms of gas injected into such
7 a gas storage reservoir during a tax month and (2) the
8 number of dekatherms of gas withdrawn from such a
9 gas storage reservoir during a tax month, whether or
10 not such gas is owned by, or is injected or withdrawn
11 for, the storage operator or any other person. Fractional
12 parts of dekatherms shall be included in the measure
13 of tax as provided in regulations promulgated by the tax
14 commissioner.

15 (b) *Effective date.*—The measure of tax under this
16 section shall include gas injected into, or withdrawn
17 from, a gas storage reservoir after the twenty-eighth
18 day of February, one thousand nine hundred eighty-
19 nine.

20 (c) *Administration; installment payments.*—The tax
21 due under this section shall be administered, collected
22 and enforced as provided in this article and articles nine
23 and ten of this chapter. The tax due under this section
24 shall be remitted in periodic installments as provided in
25 section four of this article, except that such periodic
26 installment payments shall be remitted on or before the
27 twentieth day of the month following the month or
28 quarter in which the tax accrues.

§11-13-2m. Business of generating or producing electric power; exception; rates.

1 (a) Upon every person engaging or continuing within
2 this state in the business of generating or producing
3 electric power for sale, profit or commercial use, either
4 directly or through the activity of others, in whole or in
5 part, when the sale thereof is not subject to tax under
6 section two-d of this article, the amount of the tax to be
7 equal to the value of the electric power, as shown by the
8 gross proceeds derived from the sale thereof by the
9 generator or producer of the same multiplied by a rate
10 of four percent, except that the rate shall be two percent
11 on that portion of the gross proceeds derived from the
12 sale of electric power to a plant location of a customer
13 engaged in a manufacturing activity, if the contract
14 demand at such plant location exceeds two hundred
15 thousand kilowatts per hour per year, or if the usage at
16 such plant location exceeds two hundred thousand
17 kilowatts per hour in a year.

18 (b) The measure of this tax shall be the value of all
19 electric power generated or produced in this state for
20 sale, profit or commercial use, regardless of the place
21 of sale or the fact that transmission may be to points
22 outside this state: *Provided*, That the gross income
23 received by municipally owned plants generating or
24 producing electricity shall not be subject to tax under
25 this article.

26 (c) Beginning the first day of March, one thousand
27 nine hundred eighty-nine, every person taxable under
28 this section shall determine their liability for payment
29 of tax under this section and under paragraph (3),
30 subsection (a), section two-d of this article and section
31 two-n of this article. If for taxable months beginning on
32 or after the first day of March, one thousand nine
33 hundred eighty-nine, such person's liability for payment
34 of tax under this section and paragraph (3), subsection
35 (a), section two-d of this article is less than the amount
36 of such person's liability for payment of tax under
37 section two-n of this article, then such person shall pay
38 the tax due under section two-n and not the sum of the
39 amount of tax due under this section and under

40 paragraph (3), subsection (a), section two-d of this
41 article. If the tax due under section two-n of this article
42 is less, then the amount of tax due under this section
43 and paragraph (3), subsection (a), section two-d of this
44 article shall be paid. The provisions of this section shall
45 expire and become null and void for taxable years
46 beginning on or after the first day of January, one
47 thousand nine hundred ninety-eight.

**§11-13-2n. Business of generating or producing or selling
electric power; exemptions; rates.**

1 (a) *Rate of tax.*—Upon every person engaging or
2 continuing within this state in the business of generat-
3 ing or producing electricity for sale, profit or commer-
4 cial use, either directly or indirectly through the activity
5 of others, in whole or in part, or in the business of selling
6 electricity to consumers, or in both businesses, the tax
7 imposed by section two of this article shall be equal to:

8 (1) Two tenths of one cent times the kilowatt hours of
9 net generation available for sale that was generated or
10 produced in this state by the taxpayer during the
11 taxable year, except that this rate shall be five hun-
12 dredths of one cent times the kilowatt hours of net
13 generation available for sale that was generated or
14 produced in this state by the taxpayer and sold to a
15 plant location of a customer engaged in manufacturing
16 activity if the contract demand at such plant location
17 exceeds two hundred thousand kilowatts per hour per
18 year or if the usage at such plant location exceeds two
19 hundred thousand kilowatts per hour in a year: *Pro-*
20 *vided,* That in order to encourage the development of
21 industry to improve the environment of this state, the
22 tax imposed by this section on any person generating or
23 producing electric power and an alternative form of
24 energy at a facility located within this state substan-
25 tially from gob or other mine refuse shall be equal to
26 five hundredths of one cent times the kilowatt hours of
27 net generation or production available for sale. The
28 measure of tax under this paragraph shall be equal to
29 the total kilowatt hours of net generation available for
30 sale that was generated or produced in this state by the
31 taxpayer after the twenty-eighth day of February, one

32 thousand nine hundred eighty-nine, regardless of the
33 place of sale or use, or the fact that transmission may
34 be made to points outside this state.

35 (2) Fifteen hundredths of one cent times the kilowatt
36 hours of electricity sold to consumers in this state that
37 were not generated or produced in this state by the
38 taxpayer, except that the rate shall be five hundredths
39 of one cent times the kilowatt hours of electricity not
40 generated or produced in this state by the taxpayer
41 which is sold to a plant location in this state of a
42 customer engaged in manufacturing activity if the
43 contract demand at such plant location exceeds two
44 hundred thousand kilowatts per hour per year or if the
45 usage at such plant location exceeds two hundred
46 thousand kilowatts per hour in a year. The measure of
47 tax under this paragraph shall be equal to the total
48 kilowatt hours of electricity sold to consumers in this
49 state after the twenty-eighth day of February, one
50 thousand nine hundred eighty-nine, that were not
51 generated or produced in this state by the taxpayer, to
52 be determined by subtracting from the total kilowatt
53 hours of electricity sold to consumers in the state the net
54 kilowatt hours of electricity generated or produced in
55 the state by the taxpayer during the taxable year.

56 (b) *Exemptions.*—The provisions of this section shall
57 not apply to:

58 (1) Kilowatt hours of electricity generated and sold, or
59 purchased and resold, by a municipally owned plant.

60 (2) Kilowatt hours of electric power that are separ-
61 ately metered and consumed in an electrolytic process
62 for the manufacture of chlorine.

63 (3) Kilowatt hours of electric power that are separ-
64 ately metered and consumed in the manufacture of
65 ferroalloy. As used in this paragraph, the term “ferroal-
66 loy” means any of the various alloys of iron and one or
67 more other elements used as a raw material in the
68 production of steel but shall not include electric power
69 used in the production of steel.

70 (4) The full economic benefits provided to the tax-

71 payer by paragraphs (2) and (3) of this subsection shall
72 be passed on to the manufacturer of the chlorine or
73 ferroalloy.

74 (c) *Credit*.—Any person taxable under paragraph (2),
75 subsection (a) of this section shall be allowed a credit
76 against the amount of tax due under that paragraph for
77 any electric power generation taxes paid by the
78 taxpayer with respect to such electric power to the state
79 in which such power was generated or produced. The
80 amount of credit allowed shall not exceed the tax
81 liability arising under paragraph (2), subsection (a) of
82 this section with respect to the sale of such power.

83 (d) *Transition rule*.—Beginning the first day of
84 March, one thousand nine hundred eighty-nine, electric
85 light and power companies shall determine their
86 liability for payment of tax under this section and
87 sections two-d and two-m of this article. If for taxable
88 months beginning on or after the first day of March, one
89 thousand nine hundred eighty-nine, liability for tax
90 under section two-n of this article is equal to or greater
91 than the sum of the power company's liability for
92 payment of tax under paragraph (3), subsection (a),
93 section two-d and section two-m of this article, then the
94 company shall pay the tax due under section two-n of
95 this article and not the tax due under paragraph (3),
96 subsection (a) of section two-d and section two-m of this
97 article. If tax liability under section two-n is less, then
98 tax shall be paid under paragraph (3), subsection (a),
99 section two-d and section two-m of this article and the
100 tax due under section two-n shall not be paid. The
101 provisions of this subsection (d) shall expire and become
102 null and void for taxable years beginning on or after the
103 first day of January, one thousand nine hundred ninety-
104 eight.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3. Imposition of privilege tax; phase-in of modified rates and effective dates therefor.

1 (a) Upon every person exercising the privilege of
2 engaging or continuing within this state in severing,

3 extracting, reducing to possession and producing for
4 sale, profit or commercial use any natural resource
5 product or products, there is hereby imposed a tax in
6 the amount to be determined by the application of rates
7 against the gross value of the articles produced, as
8 shown by the gross proceeds derived from the sale
9 thereof by the producer, except as otherwise provided,
10 multiplied by the rates, in the classifications and
11 according to the effective dates in subsection (b) of this
12 section.

13 (b) *Tax rates; classifications; effective dates.*—Begin-
14 ning on and after the first day of July, one thousand nine
15 hundred eighty-seven, and for each date, as specified
16 below, the rates of tax on each respective classification
17 and for each respective year are as follows:

18 (1) On coal, and including the thirty-five one hun-
19 dredths (.35) of one percent additional severance tax on
20 such coal for the benefit of counties and municipalities,
21 as provided in section six of this article, on

22 July 1, 1987—three and eighty-five one hundredths
23 (3.85) percent;

24 July 1, 1988—three and eighty-eight one hundredths
25 (3.88) percent; and

26 March 1, 1989—and thereafter — five (5.0) percent.

27 (2) On limestone or sandstone quarried or mined, on

28 July 1, 1987—two and two-tenths (2.2) percent;

29 July 1, 1988—two and fifty-six one hundredths (2.56)
30 percent;

31 July 1, 1989—two and ninety-two one hundredths
32 (2.92) percent;

33 July 1, 1990—three and twenty-eight one hundredths
34 (3.28) percent;

35 July 1, 1991—three and sixty-four one hundredths
36 (3.64) percent;

37 July 1, 1992—four (4.0) percent;

38 July 1, 1993—four and fifty one hundredths (4.5)
39 percent; and

40 July 1, 1994—and thereafter—five (5.0) percent.

41 (3) On oil, on

42 July 1, 1987—four and thirty-four one hundredths
43 (4.34) percent;

44 July 1, 1988—four and two hundred seventy-two one
45 thousandths (4.272) percent; and

46 March 1, 1989—and thereafter—five (5.0) percent.

47 (4)(a) On natural gas, on

48 July 1, 1987—six and five-tenths (6.5) percent;

49 July 1, 1988—six (6.0) percent;

50 July 1, 1989—five and five-tenths (5.5) percent; and

51 July 1, 1990—and thereafter—five (5.0) percent.

52 (4)(b) On natural gas produced from new wells drilled
53 and placed in service on and after July 1, 1987, on

54 July 1, 1987—four (4.0) percent; and

55 March 1, 1989—and thereafter—five (5.0) percent.

56 (5) On sand, gravel or other mineral product not
57 quarried or mined, on

58 July 1, 1987—four and thirty-four one hundredths
59 (4.34) percent;

60 July 1, 1988—four and two hundred seventy-two one
61 thousandths (4.272) percent; and

62 March 1, 1989—and thereafter—five (5.0) percent.

63 (6) On timber, on

64 July 1, 1987—two and five-tenths (2.5) percent; and

65 March 1, 1989—and thereafter—three and twenty-two
66 hundredths (3.22) percent.

67 (7) On other natural resources, on

68 July 1, 1987—two and eighty-six one hundredths (2.86)
69 percent;

70 July 1, 1988—three and eighty-eight one thousandths
71 (3.088) percent;

72 July 1, 1989—three and three hundred sixteen one
73 thousandths (3.316) percent;

74 July 1, 1990—three and five hundred forty-four one
75 thousandths (3.544) percent;

76 July 1, 1991—three and seven hundred seventy-two
77 one thousandths (3.772) percent;

78 July 1, 1992—four (4.0) percent;

79 July 1, 1993—four and fifty one hundredths (4.5)
80 percent; and

81 July 1, 1994—and thereafter—five (5.0) percent.

82 (c) *Tax in addition to other taxes.*—The taxes imposed
83 by this article shall apply to all persons severing or
84 processing (or both severing and processing) natural
85 resources in this state and shall be in addition to all
86 other taxes imposed by law.

87 (d) *Statement of purpose; relationship to existing*
88 *contracts.*—It is the intent of the Legislature in enacting
89 this article to continue the imposition of the tax upon
90 exercising the privilege of engaging in or continuing
91 within this state the business of severing, extracting,
92 reducing to possession and producing for sale, profit or
93 commercial use, natural resource products, which was
94 imposed by section two-a, article thirteen of this chapter
95 prior to the first day of July, one thousand nine hundred
96 eighty-seven, by such act. The provisions of any contract
97 entered into prior to the effective date of this act and
98 relating to the allocation, reimbursement, payment or
99 assessment of the tax imposed by section two-a, article
100 thirteen of this chapter, formerly, shall apply with full
101 force and effect to the tax imposed by this article; it
102 being the intent of the Legislature that, for purposes of
103 any such contractual provision, the tax imposed by this
104 article shall be considered the same as the tax imposed
105 by section two-a, article thirteen of this chapter prior
106 to the first day of July, one thousand nine hundred
107 eighty-seven.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-2. Definitions.

§11-15-3. Amount of tax; allocation of tax and transfers.

§11-15-8a. Contractors.

§11-15-9. Exemptions.

§11-15-33. Effective date.

§11-15-2. Definitions.

1 For purposes of this article:

2 (a) "Persons" shall mean any individual, partnership,
3 association, corporation, municipal corporation,
4 guardian, trustee, committee, executor or administrator.

5 (b) "Tax commissioner" shall mean the state tax
6 commissioner.

7 (c) "Gross proceeds" shall mean the amount received
8 in money, credits, property or other consideration from
9 sales and services within this state, without deduction
10 on account of the cost of property sold, amounts paid for
11 interest or discounts or other expenses whatsoever.
12 Losses shall not be deducted, but any credit or refund
13 made for goods returned may be deducted.

14 (d) "Sale," "sales" or "selling" shall include any
15 transfer of the possession or ownership of tangible
16 personal property for a consideration, including a lease
17 or rental, when the transfer or delivery is made in the
18 ordinary course of the transferor's business and is made
19 to the transferee or his agent for consumption or use or
20 any other purpose.

21 (e) "Vendor" shall mean any person engaged in this
22 state in furnishing services taxed by this article or
23 making sales of tangible personal property.

24 (f) "Ultimate consumer" or "consumer" shall mean a
25 person who uses or consumes services or personal
26 property.

27 (g) "Business" shall include all activities engaged in
28 or caused to be engaged in with the object of gain or
29 economic benefit, direct or indirect, and all activities of
30 the state and its political subdivisions which involve
31 sales of tangible personal property or the rendering of

32 services when those service activities compete with or
33 may compete with the activities of other persons.

34 (h) "Tax" shall include all taxes, interest and penalties
35 levied hereunder.

36 (i) "Service" or "selected service" shall include all
37 nonprofessional activities engaged in for other persons
38 for a consideration, which involve the rendering of a
39 service as distinguished from the sale of tangible
40 personal property, but shall not include contracting,
41 personal services or the services rendered by an
42 employee to his employer or any service rendered for
43 resale.

44 (j) "Purchaser" shall mean a person who purchases
45 tangible personal property or a service taxed by this
46 article.

47 (k) "Personal service" shall include those:

48 (1) Compensated by the payment of wages in the
49 ordinary course of employment; and

50 (2) Rendered to the person of an individual without,
51 at the same time, selling tangible personal property,
52 such as nursing, barbering, shoeshining, manicuring
53 and similar services.

54 (l) "Taxpayer" shall mean any person liable for the
55 tax imposed by this article.

56 (m) "Drugs" shall include all sales of drugs or
57 appliances to a purchaser, upon prescription of a
58 physician or dentist and any other professional person
59 licensed to prescribe.

60 (n) (1) "Directly used or consumed" in the activities of
61 manufacturing, transportation, transmission, communi-
62 cation or the production of natural resources shall mean
63 used or consumed in those activities or operations which
64 constitute an integral and essential part of such
65 activities, as contrasted with and distinguished from
66 those activities or operations which are simply inciden-
67 tal, convenient or remote to such activities.

68 (2) Uses of property or consumption of services which

69 constitute direct use or consumption in the activities of
70 manufacturing, transportation, transmission, communi-
71 cation or the production of natural resources shall
72 include only:

73 (A) In the case of tangible personal property, physical
74 incorporation of property into a finished product
75 resulting from manufacturing production or the produc-
76 tion of natural resources;

77 (B) Causing a direct physical, chemical or other
78 change upon property undergoing manufacturing
79 production or production of natural resources;

80 (C) Transporting or storing property undergoing
81 transportation, communication, transmission, manufac-
82 turing production or production of natural resources;

83 (D) Measuring or verifying a change in property
84 directly used in transportation, communication, trans-
85 mission, manufacturing production or production of
86 natural resources;

87 (E) Physically controlling or directing the physical
88 movement or operation of property directly used in
89 transportation, communication, transmission, manufac-
90 turing production or production of natural resources;

91 (F) Directly and physically recording the flow of
92 property undergoing transportation, communication,
93 transmission, manufacturing production or production
94 of natural resources;

95 (G) Producing energy for property directly used in
96 transportation, communication, transmission, manufac-
97 turing production or production of natural resources;

98 (H) Facilitating the transmission of gas, water, steam
99 or electricity from the point of their diversion to
100 property directly used in transportation, communica-
101 tion, transmission, manufacturing production or produc-
102 tion of natural resources;

103 (I) Controlling or otherwise regulating atmospheric
104 conditions required for transportation, communication,
105 transmission, manufacturing production or production
106 of natural resources;

107 (J) Serving as an operating supply for property
108 undergoing transmission, manufacturing production or
109 production of natural resources or for property directly
110 used in transportation, communication, transmission,
111 manufacturing production or production of natural
112 resources;

113 (K) Maintenance or repair of property directly used
114 in transportation, communication, transmission, manu-
115 facturing production or production of natural resources;

116 (L) Storage, removal or transportation of economic
117 waste resulting from the activities of manufacturing,
118 transportation, communication, transmission or the
119 production of natural resources;

120 (M) Pollution control or environmental quality or
121 protection activity directly relating to the activities of
122 manufacturing, transportation, communication, trans-
123 mission or the production of natural resources and
124 personnel, plant, product or community safety or
125 security activity directly relating to the activities of
126 manufacturing, transportation, communication, trans-
127 mission or the production of natural resources; or

128 (N) Otherwise be used as an integral and essential
129 part of transportation, communication, transmission,
130 manufacturing production or production of natural
131 resources.

132 (3) Uses of property or services which would not
133 constitute direct use or consumption in the activities of
134 manufacturing, transportation, transmission, communi-
135 cation or the production of natural resources shall
136 include, but not be limited to:

137 (A) Heating and illumination of office buildings;

138 (B) Janitorial or general cleaning activities;

139 (C) Personal comfort of personnel;

140 (D) Production planning, scheduling of work, or
141 inventory control;

142 (E) Marketing, general management, supervision,
143 finance, training, accounting and administration; or

144 (F) An activity or function incidental or convenient to
145 transportation, communication, transmission, manufac-
146 turing production or production of natural resources,
147 rather than an integral and essential part of such
148 activities.

149 (o) "Contracting" shall mean the furnishing of work,
150 or both materials and work, in fulfillment of a contract
151 for the construction, alteration, repair, decoration or
152 improvement of a new or existing building or structure,
153 or any part thereof, or for removal or demolition of a
154 building or structure, or any part thereof, or for the
155 alteration, improvement or development of real prop-
156 erty. For purposes of this definition, the term "struc-
157 ture" shall include, but not be limited to, everything
158 built up or composed of parts joined together in some
159 definite manner and attached to real property, or which
160 adds utility to a particular parcel of property and is
161 intended to remain there for an indefinite period of
162 time.

163 (p) "Manufacturing" shall mean a systematic opera-
164 tion or integrated series of systematic operations
165 engaged in as a business or segment of a business which
166 transforms or converts tangible personal property by
167 physical, chemical or other means into a different form,
168 composition or character from that in which it originally
169 existed.

170 (q) "Transportation" shall mean the act or process of
171 conveying, as a commercial enterprise, passengers or
172 goods from one place or geographical location to another
173 place or geographical location.

174 (r) "Transmission" shall mean the act or process of
175 causing liquid, natural gas or electricity to pass or be
176 conveyed from one place or geographical location to
177 another place or geographical location through a
178 pipeline or other medium for commercial purposes.

179 (s) "Communication" shall mean all telephone, radio,
180 light, light wave, radio telephone, telegraph and other
181 communication or means of communication, whether
182 used for voice communication, computer data transmis-
183 sion or other encoded symbolic information transfers

184 and shall include commercial broadcast radio, commer-
185 cial broadcast television and cable television.

186 (t) "Production of natural resources" shall mean the
187 performance, by either the owner of the natural
188 resources or another, of the act or process of exploring,
189 developing, severing, extracting, reducing to possession
190 and loading for shipment for sale, profit or commercial
191 use of any natural resource products and any reclama-
192 tion, waste disposal or environmental activities asso-
193 ciated therewith.

§11-15-3. Amount of tax; allocation of tax and transfers.

1 (a) For the privilege of selling tangible personal
2 property and of dispensing certain selected services
3 defined in sections two and eight of this article, the
4 vendor shall collect from the purchaser the tax as
5 provided under this article, and shall pay the amount
6 of tax to the tax commissioner in accordance with the
7 provisions of this article.

8 (b) Beginning on the first day of March, one thousand
9 nine hundred eighty-nine, the general consumers sales
10 and service tax imposed by this article shall be at the
11 rate of six cents on the dollar of sales or services,
12 excluding gasoline and special fuel sales, which remain
13 taxable at the rate of five cents on the dollar of sales.

14 (c) There shall be no tax on sales where the monetary
15 consideration is five cents or less. The amount of the tax
16 shall be computed as follows:

17 (1) On each sale, where the monetary consideration is
18 from six cents to sixteen cents, both inclusive, one cent.

19 (2) On each sale, where the monetary consideration is
20 from seventeen cents to thirty-three cents, both inclu-
21 sive, two cents.

22 (3) On each sale, where the monetary consideration is
23 from thirty-four cents to fifty cents, both inclusive, three
24 cents.

25 (4) On each sale, where the monetary consideration is
26 from fifty-one cents to sixty-seven cents, both inclusive,
27 four cents.

28 (5) On each sale, where the monetary consideration is
29 from sixty-eight cents to eighty-four cents, both inclu-
30 sive, five cents.

31 (6) On each sale, where the monetary consideration is
32 from eighty-five cents to one dollar, both inclusive, six
33 cents.

34 (7) If the sale price is in excess of one dollar, six cents
35 on each whole dollar of sale price, and upon any
36 fractional part of a dollar in excess of whole dollars as
37 follows: One cent on the fractional part of the dollar if
38 less than seventeen cents; two cents on the fractional
39 part of the dollar if in excess of sixteen cents but less
40 than thirty-four cents; three cents on the fractional part
41 of the dollar if in excess of thirty-three cents but less
42 than fifty-one cents; four cents on the fractional part of
43 the dollar if in excess of fifty cents but less than sixty-
44 eight cents; five cents on the fractional part of the dollar
45 if in excess of sixty-seven cents but less than eighty-five
46 cents; and six cents on the fractional part of the dollar
47 if in excess of eighty-four cents. For example, the tax
48 on sales from one dollar and one cent to one dollar and
49 sixteen cents, both inclusive, seven cents; on sales from
50 one dollar and seventeen cents to one dollar and thirty-
51 three cents, both inclusive, eight cents; on sales from one
52 dollar and thirty-four cents to one dollar and fifty cents,
53 both inclusive, nine cents; on sales from one dollar and
54 fifty-one cents to one dollar and sixty-seven cents, both
55 inclusive, ten cents; on sales from one dollar and sixty-
56 eight cents to one dollar and eighty-four cents, both
57 inclusive, eleven cents and on sales from one dollar and
58 eighty-five cents to two dollars, both inclusive, twelve
59 cents.

60 (d) Separate sales, such as daily or weekly deliveries,
61 shall not be aggregated for the purpose of computation
62 of the tax even though such sales are aggregated in the
63 billing or payment therefor. Notwithstanding any other
64 provision, coin-operated amusement and vending ma-
65 chine sales shall be aggregated for the purpose of
66 computation of this tax.

67 (e) Of the taxes collected under the provisions of this

68 article, one sixth of such taxes collected for the period
69 subsequent to the thirty-first day of May, one thousand
70 nine hundred eighty-eight, prior to the first day of July,
71 one thousand nine hundred eighty-nine, and not attrib-
72 utable to or resulting from the repeal of section eleven
73 of this article or attributable to tax on purchases of
74 gasoline and special fuel, shall be reasonably allocated,
75 with allowance for refunds and net of reasonable costs
76 of administration, to and deposited by the tax commis-
77 sioner in the special account created in the treasury by
78 section eight-a, article four-b, chapter twenty-three of
79 this code, not to exceed the amount sufficient for making
80 timely repayment of the principal and interest under the
81 first payment due, by the thirtieth day of June, one
82 thousand nine hundred eighty-nine, in repayment for
83 the moneys previously transferred from such pneumo-
84 coniosis fund.

§11-15-8a. Contractors.

1 (a) The provisions of this article shall not apply to
2 contracting services. However, purchases by a contrac-
3 tor of tangible personal property or taxable services for
4 use or consumption in the providing of a contracting
5 service shall be taxable beginning the first day of
6 March, one thousand nine hundred eighty-nine, except
7 as otherwise provided in this article.

8 (b) *Transition rules.*—The exemption from payment
9 of tax on purchases of tangible personal property or
10 taxable services directly used or consumed in the
11 activity of contracting, as defined in section two of this
12 article, which expires as of the first day of March, one
13 thousand nine hundred eighty-nine, shall nevertheless
14 remain in effect with respect to:

15 (1) Tangible personal property or taxable services
16 purchased by a contractor on or after said first day of
17 March in fulfillment of a written contract for contract-
18 ing, as defined in section two of this article, that was
19 executed and legally binding on the parties thereto on
20 or before the fifteenth day of February, one thousand
21 nine hundred eighty-nine; or in fulfillment of a written
22 contract entered into after the said fifteenth day of

23 February pursuant to a written bid for contracting that
24 was made on or before the said fifteenth day of
25 February that was binding on the contractor, but only
26 to the extent that the bid is subsequently incorporated
27 into a written contract; or

28 (2) Tangible personal property or taxable services
29 purchased by a contractor on or after the said first day
30 of March pursuant to a written contract executed on or
31 before the fifteenth day of February, one thousand nine
32 hundred eighty-nine, to purchase in specified quantities
33 identified tangible personal property or specified
34 taxable services.

35 (3) Tangible personal property or taxable services
36 purchased by a contractor for consumption or use in
37 fulfillment of a written contract entered into before the
38 first day of September, one thousand nine hundred
39 eighty-nine, when such contract is for the construction
40 of a new improvement to real property the construction
41 or operation of which was approved by a federal or state
42 regulatory body prior to the first day of February, one
43 thousand nine hundred eighty-nine.

44 (c) *Renewals and extensions.*—A renewal of any
45 contract shall constitute a new contract for purposes of
46 this section, and the date of entry into a contract
47 renewal by the parties, the date or dates of tender of
48 consideration and the time of performance of any
49 contractual obligations under a renewed contract shall
50 be treated as the dates for determining application of
51 this section to the renewed contract. Extensions of time
52 granted or agreed upon by the parties to a contract for
53 performance of the contract or for tender of consider-
54 ation under the contract shall not be treated as contract
55 renewals. Contracts to which such extensions apply shall
56 be treated under these transition rules as if the original
57 contractual provisions for performance and tender of
58 consideration remain in effect.

59 (d) *Definitions.*—For purposes of this section:

60 (1) The term “contract” or “contracts” means written
61 agreements reciting or setting forth a fixed price
62 consideration or a consideration based upon cost plus a

63 stated percentage or a stated monetary increment. This
64 term shall not mean or include ongoing sales contracts,
65 contracts whereby any element of the consideration or
66 the property or services sold or to be rendered in
67 performance of the contract are undefined, or deter-
68 mined, as to either nature or quantity, subsequent to the
69 making of the contract, or any open-ended contract.

70 (2) The term "contract renewal" or "renewal" means
71 a covenant or agreement entered into or assumed by
72 parties which have a current contractual relation or
73 which have had a past contractual relation, whereby the
74 parties agree to incur obligations beyond those which
75 they were, or would have been, required, at the
76 minimum, to carry out under their current or past
77 contractual relation.

§11-15-9. Exemptions.

1 (a) Sales of gas, steam and water delivered to consu-
2 mers through mains or pipes, and sales of electricity;

3 (b) Sales of textbooks required to be used in any of
4 the schools of this state;

5 (c) Sales of property or services to the state, its
6 institutions or subdivisions, and to the United States,
7 including agencies of federal, state or local governments
8 for distribution in public welfare or relief work;

9 (d) Sales of motor vehicles which are titled by the
10 department of motor vehicles and which are subject to
11 the tax imposed by section four, article three, chapter
12 seventeen-a of the code;

13 (e) Sales of property or services to churches and bona
14 fide charitable organizations who make no charge
15 whatsoever for the services they render: *Provided*, That
16 the exemption herein granted shall apply only to
17 services, equipment, supplies, food for meals and
18 materials directly used or consumed by these organiza-
19 tions, and shall not apply to purchases of gasoline or
20 special fuel;

21 (f) Sales of property or services to corporations or
22 organizations qualified under section 501(c)(3) of the

23 Internal Revenue Code of 1986, as amended, or under
24 section 501(c)(4) of the Internal Revenue Code of 1986,
25 as amended, who make casual and occasional sales not
26 conducted in a repeated manner or in the ordinary
27 course of repetitive and successive transactions of like
28 character: *Provided*, That the exemption herein granted
29 shall apply only to services, equipment, supplies and
30 materials directly used or consumed in the activities for
31 which such organizations qualify as tax exempt organ-
32 izations under the Internal Revenue Code by these
33 organizations and shall not apply to purchases of
34 gasoline or special fuel;

35 (g) Sales of property or services to persons engaged
36 in this state in the business of manufacturing, transpor-
37 tation, transmission, communication or in the produc-
38 tion of natural resources: *Provided*, That the exemption
39 herein granted shall apply only to services, machinery,
40 supplies and materials directly used or consumed in the
41 businesses or organizations named above, and shall not
42 apply to purchases of gasoline or special fuel: *Provided*,
43 *however*, That on and after the first day of July, one
44 thousand nine hundred eighty-seven, the exemption
45 provided in this subsection shall apply only to services,
46 machinery, supplies and materials directly used or
47 consumed in the activities of manufacturing, transpor-
48 tation, transmission, communication or the production of
49 natural resources in the businesses or organizations
50 named above and shall not apply to purchases of
51 gasoline or special fuel;

52 (h) An isolated transaction in which any tangible
53 personal property is sold, transferred, offered for sale
54 or delivered by the owner thereof or by his representa-
55 tive for the owner's account, such sale, transfer, offer for
56 sale or delivery not being made in the ordinary course
57 of repeated and successive transactions of like character
58 by such owner or on his account by such representative;

59 (i) Sales of tangible personal property and services
60 rendered for use or consumption in connection with the
61 business of dispensing a service subject to tax under this
62 article and sales of tangible personal property and
63 services rendered for use or consumption in connection

64 with the commercial production of an agricultural
65 product the ultimate sale of which will be subject to the
66 tax imposed by this article or which would have been
67 subject to tax under this article: *Provided*, That sales of
68 tangible personal property and services to be used or
69 consumed in the construction of or permanent improve-
70 ment to real property and sales of gasoline and special
71 fuel shall not be exempt;

72 (j) Sales of tangible personal property to a person for
73 the purpose of resale in the form of tangible personal
74 property: *Provided*, That sales of gasoline and special
75 fuel by distributors and importers shall be taxable
76 except when the sale is to another distributor for resale:
77 *Provided, however*, That sales of building materials or
78 building supplies or other property to any person
79 engaging in the activity of contracting, as defined in this
80 article, which is to be installed in, affixed to or
81 incorporated by such person or his agent into any real
82 property, building or structure shall not be exempt
83 under this subsection, except that sales of tangible
84 personal property to a person engaging in the activity
85 of contracting pursuant to a written contract with this
86 state, or with a political subdivision thereof, or with a
87 public corporation created by the Legislature or by
88 another government entity pursuant to an act of the
89 Legislature, for a building or structure (or improvement
90 thereto) or other improvement to real property that is
91 or will be owned and used by the governmental entity
92 for a governmental or proprietary purpose, who incor-
93 porates such property in such building, structure or
94 improvement shall, with respect to such tangible
95 personal property, nevertheless be deemed to be the
96 vendor of such property to the governmental entity and
97 any person seeking to qualify for and assert this
98 exception must do so pursuant to such legislative rules
99 and regulations as the tax commissioner may promul-
100 gate and upon such forms as the tax commissioner may
101 prescribe. A subcontractor who, pursuant to a written
102 subcontract with a prime contractor who qualifies for
103 this exception, provides equipment, or materials, and
104 labor to such a prime contractor shall be treated in the
105 same manner as the prime contractor is treated with

106 respect to the prime contract under this exception and
107 the legislative rules and regulations promulgated by the
108 tax commissioner;

109 (k) Sales of property or services to nationally char-
110 tered fraternal or social organizations for the sole
111 purpose of free distribution in public welfare or relief
112 work: *Provided*, That sales of gasoline and special fuel
113 shall be taxable;

114 (l) Sales and services, fire fighting or station house
115 equipment, including construction and automotive,
116 made to any volunteer fire department organized and
117 incorporated under the laws of the state of West
118 Virginia: *Provided*, That sales of gasoline and special
119 fuel shall be taxable;

120 (m) Sales of newspapers when delivered to consumers
121 by route carriers;

122 (n) Sales of drugs dispensed upon prescription and
123 sales of insulin to consumers for medical purposes;

124 (o) Sales of radio and television broadcasting time,
125 preprinted advertising circulars and newspaper and
126 outdoor advertising space for the advertisement of goods
127 or services;

128 (p) Sales and services performed by day-care centers;

129 (q) Casual and occasional sales of property or services
130 not conducted in a repeated manner or in the ordinary
131 course of repetitive and successive transactions of like
132 character by corporations or organizations qualified
133 under section 501(c)(3) of the Internal Revenue Code of
134 1986, as amended, or under section 501(c)(4) of the
135 Internal Revenue Code of 1986, as amended;

136 (r) Sales of property or services to a school which has
137 approval from the West Virginia board of regents to
138 award degrees, which has its principal campus in this
139 state, and which is exempt from federal and state
140 income taxes under section 501(c)(3) of the Internal
141 Revenue Code of 1986, as amended: *Provided*, That sales
142 of gasoline and special fuel shall be taxable;

143 (s) Sales of mobile homes to be utilized by purchasers

144 as their principal year-round residence and dwelling;
145 *Provided*, That these mobile homes shall be subject to
146 tax at the three percent rate;

147 (t) Sales of lottery tickets and materials by licensed
148 lottery sales agents and lottery retailers authorized by
149 the state lottery commission, under the provisions of
150 article twenty-two, chapter twenty-nine of this code;

151 (u) Leases of motor vehicles titled pursuant to the
152 provisions of article three, chapter seventeen-a of this
153 code to lessees for a period of thirty or more consecutive
154 days. This exemption shall apply to leases executed on
155 or after the first day of July, one thousand nine hundred
156 eighty-seven, and to payments under long-term leases
157 executed before such date, for months thereof beginning
158 on or after such date;

159 (v) Notwithstanding the provisions of subsection (g) of
160 this section or any provisions of this article to the
161 contrary, sales of property and services to persons
162 subject to tax under article thirteen, thirteen-a or
163 thirteen-b of this chapter: *Provided*, That the exemption
164 herein granted shall apply both to property or services
165 directly or not directly used or consumed in the conduct
166 of privileges which are subject to tax under such articles
167 but shall not apply to purchases of gasoline or special
168 fuel;

169 (w) Sales of propane to consumers for poultry house
170 heating purposes, with any seller to such consumer who
171 may have prior paid such tax in his price, to not pass
172 on the same to the consumer, but to make application
173 and receive refund of such tax from the tax commis-
174 sioner, pursuant to rules and regulations which shall be
175 promulgated by the tax commissioner; and notwith-
176 standing the provisions of section eighteen of this article
177 or any other provisions of such article to the contrary;

178 (x) Any sales of tangible personal property or services
179 purchased after the thirtieth day of September, one
180 thousand nine hundred eighty-seven, and lawfully paid
181 for with food stamps pursuant to the federal food stamp
182 program codified in 7 United States Code, §2011, et seq.,
183 as amended, or with drafts issued through the West

184 Virginia special supplemental food program for women,
185 infants and children codified in 42 United States Code,
186 §1786;

187 (y) Sales of tickets for activities sponsored by elemen-
188 tary and secondary schools located within this state; and

189 (z) Sales of electronic data processing services and
190 related software: *Provided*, That for the purposes of this
191 subsection (z) "electronic data processing services"
192 means (1) the processing of another's data, including all
193 processes incident to processing of data such as key-
194 punching, keystroke verification, rearranging or sorting
195 of previously documented data for the purpose of data
196 entry or automatic processing, and changing the
197 medium on which data is sorted, whether these pro-
198 cesses are done by the same person or several persons;
199 and (2) providing access to computer equipment for the
200 purpose of processing data or examining or acquiring
201 data stored in or accessible to such computer equipment.

§11-15-33. Effective date.

1 The provisions of this article as amended or added by
2 this act shall take effect on the first day of March, one
3 thousand nine hundred eighty-nine, and apply to all
4 taxable years ending after that date: *Provided*, That if
5 an effective date is expressly provided in such provision,
6 that specific effective date shall control in lieu of this
7 general effective date provision.

ARTICLE 15A. USE TAX.

§11-15A-2. Imposition of tax; six percent tax rate beginning March one, one thousand nine hundred eighty-nine; inclusion of services as taxable on and after the first day of July, one thousand nine hundred eighty-seven; transition rules; allocation of tax and transfers.

§11-15A-29. Effective date.

§11-15A-2. Imposition of tax; six percent tax rate beginning March one, one thousand nine hundred eighty-nine; inclusion of services as taxable on and after the first day of July, one thousand nine hundred eighty-seven; transition rules; allocation of tax and transfers.

§11-15A-29. Effective date.

§11-15A-2. Imposition of tax; six percent tax rate beginning March one, one thousand nine hundred eighty-nine; inclusion of services as taxable on and after the first day of July, one thousand nine hundred eighty-seven; transition rules; allocation of tax and transfers.

1 (a) An excise tax is hereby levied and imposed on the
2 use in this state of tangible personal property or taxable
3 services, to be collected and paid as hereinafter
4 provided, at the rate of six percent of the purchase price
5 of such property or taxable services, beginning on the
6 first day of March, one thousand nine hundred eighty-
7 nine, except that sales of gasoline and special fuel shall
8 remain taxable at five percent. "Taxable services," for
9 the purposes of this article, means services of the nature
10 that are subject to the tax imposed by article fifteen of
11 this chapter. In this article, wherever the words
12 "tangible personal property" or "property" appear, the
13 same shall include the words "or taxable services,"
14 where the context so requires.

15 (b) Such tax is hereby imposed upon every person
16 using tangible personal property or taxable services
17 within this state. That person's liability is not extin-
18 guished until such tax has been paid. A receipt with the
19 tax separately stated thereon issued by a retailer
20 engaged in business in this state, or by a foreign retailer
21 who is authorized by the tax commissioner to collect the
22 tax imposed by this article, relieves the purchaser from
23 further liability for the tax to which the receipt refers.

24 (c) Purchases of tangible personal property or taxable
25 services made for the government of the United States
26 or any of its agencies by ultimate consumers shall be
27 subject to the tax imposed by this section. Industrial
28 materials and equipment owned by the federal govern-
29 ment within the state of West Virginia of a character
30 not ordinarily readily obtainable within the state shall
31 not be subject to use tax when sold, if such industrial
32 materials and equipment would not be subject to use

41 (f) Of the taxes collected under the provisions of this
42 article, one sixth of such taxes collected for the period
43 subsequent to the thirty-first day of May, one thousand
44 nine hundred eighty-eight, and prior to the first day of
45 July, one thousand nine hundred eighty-nine, and not
46 attributable to or resulting from the repeal of section
47 eleven, article fifteen of this chapter or attributable to
48 tax on gasoline and special fuel, shall be reasonably
49 allocated, with allowances for refunds and net of
50 reasonable costs of administration, to, and deposited by
51 the tax commissioner in the special account created in
52 the treasury by section eight-a, article four-b, chapter
53 twenty-three of this code, not to exceed the amount
54 sufficient for making timely repayment of the principal
55 and interest under the first payment due, by the
56 thirtieth day of June, one thousand nine hundred eighty-
57 nine, in repayment for the moneys previously trans-
58 ferred from such pneumoconiosis fund.

§11-15A-29. Effective date.

1 The provisions of this article as amended or added by
2 this act shall take effect on the first day of March, one
3 thousand nine hundred eighty-nine, and apply to all
4 taxable years ending after that date: *Provided*, That if
5 an effective date is expressly provided in such provision,
6 that specific effective date shall control in lieu of this
7 general effective date provision.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-6. Imposition of tax; change in rate of tax.

§11-23-17. Credits against tax; expiration of credits.

§11-23-6. Imposition of tax; change in rate of tax.

1 (a) *General*.—An annual business franchise tax is
2 hereby imposed on the privilege of doing business in this
3 state and in respect of the benefits and protections
4 conferred. Such tax shall be collected from every
5 domestic corporation, every corporation having its
6 commercial domicile in this state, every foreign or
7 domestic corporation owning or leasing real or tangible
8 personal property located in this state or doing business
9 in this state and from every partnership owning or
10 leasing real or tangible personal property located in this

11 state or doing business in this state, effective on and
12 after the first day of July, one thousand nine hundred
13 eighty-seven.

14 (b) *Amount of tax and rate; effective date.*

15 (1) On and after the first day of July, one thousand
16 nine hundred eighty-seven, the amount of tax shall be
17 the greater of fifty dollars or fifty-five one hundredths
18 of one percent of the value of the tax base, as determined
19 under this article: *Provided*, That when the taxpayer's
20 first taxable year under this article is a short taxable
21 year, the taxpayer's liability shall be prorated based
22 upon the ratio which the number of months in which
23 such short taxable year bears to twelve: *Provided*,
24 *however*, That this subdivision (1) shall not apply to
25 taxable years beginning on or after the first day of
26 January, one thousand nine hundred eighty-nine.

27 (2) *Taxable years after December 31, 1988.*—For
28 taxable years beginning on or after the first day of
29 January, one thousand nine hundred eighty-nine, the
30 amount of tax due under this article shall be the greater
31 of fifty dollars or seventy-five one hundredths of one
32 percent of the value of the tax base as determined under
33 this article: *Provided*, That when the taxpayer's taxable
34 year for federal income tax purposes is a short taxable
35 year, the tax determined by application of the tax rate
36 to the taxpayer's tax base shall be prorated based upon
37 the ratio which the number of months in such short
38 taxable year bears to twelve: *Provided, however*, That
39 when the taxpayer's first taxable year under this article
40 is less than twelve months, the taxpayer's liability shall
41 be prorated based upon the ratio which the number of
42 months taxpayer was doing business in this state bears
43 to twelve but in no event shall the tax due be less than
44 fifty dollars.

§11-23-17. Credits against tax; expiration of credits.

1 (a) A credit shall be allowed against the tax imposed
2 by this article equal to the amount of franchise tax
3 liability due under this article, for the taxable year
4 (determined before application of other allowable
5 credits) multiplied by a fraction, the numerator of which

6 is the gross income of the business subject to tax under
7 article thirteen-a of this chapter and the denominator of
8 which is the total amount of gross receipts derived from
9 or attributable to all of taxpayer's activity in West
10 Virginia.

11 (b) For taxable years ending after the thirtieth day
12 of June, one thousand nine hundred eighty-eight, a
13 credit shall be allowed against the tax imposed by this
14 article equal to the amount of franchise tax liability due
15 under this article, for the taxable year (determined
16 before application of other allowable credits) multiplied
17 by a fraction, the numerator of which is the gross
18 income of the business subject to tax under article
19 thirteen of this chapter and the denominator of which
20 is the total amount of gross receipts derived from or
21 attributable to all of taxpayer's activity in West
22 Virginia: *Provided*, That such credit shall be prorated
23 and only that amount attributable to months of the
24 taxable year beginning after June thirtieth, one thou-
25 sand nine hundred eighty-eight, shall be allowed as a
26 credit.

27 (c) A parent taxpayer who files a separate return
28 under this article shall be allowed a credit against such
29 taxpayer's liability for the tax under this article for the
30 amount of net taxes that would have been paid without
31 regard to the adjustment required by subparagraph (D),
32 paragraph (2), subsection (b), section three of this article
33 for the taxable year by a subsidiary corporation or
34 partnership: *Provided*, That the amount of credit
35 allowed shall not exceed the amount of tax that would
36 have been paid, without regard to such adjustment,
37 under this article by the subsidiary or partnership,
38 multiplied by the percentage of the parent's ownership
39 of the subsidiary corporation or partnership. In the case
40 of corporations, this percentage shall be equal to the
41 percentage of stock of all classes owned by the parent.
42 In no case shall any credit allowable by this section,
43 which is not used on an annual return, be carried
44 forward or back, but instead the same shall be forfeited.

45 (d) A credit shall be allowed against the tax imposed
46 by this article for the taxable year equal to the amount

47 of liability of the taxpayer for the taxable year for the
48 full amount of any tax imposed pursuant to article eight
49 of this chapter on the capital of the business, as
50 determined under sections fourteen and fourteen-a,
51 article three of this chapter.

52 (e) *Expiration of credits.*—The credits authorized in
53 subsection (a) of this section shall expire and not be
54 authorized or allowed for any taxable month beginning
55 on or after the first day of March, one thousand nine
56 hundred eighty-nine. For taxable years beginning
57 before said first day of March and ending after such
58 date, the annual credit heretofore allowed by subsection
59 (a) of this section shall be prorated by the number of
60 months in the taxable year and only that portion of the
61 credit attributable to months ending prior to said first
62 day of March shall be allowable under this section.

CHAPTER 3

(Com. Sub. for S. B. 2—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed February 1, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter five-f, relating to the reorganization of the executive branch of state government; setting forth certain legislative findings and declarations; providing a rule of construction; creating seven new departments in the executive branch of state government; creating the office of secretary as the administrative head of each such department; specifying the appointment, term, oath, bond and compensation of each such secretary and funding for expenditures for personal services of the secretary's office; defining terms; providing for the transfer to and incorporation in such departments of numerous state agencies and boards and their allied, advisory, affiliated and related entities and funds; retaining the existence, powers,

authority, duties and status of administrators, agencies and boards; providing for code references elsewhere; relating to the powers and authority of the secretary of each such department; providing rule-making authority; making special provisions for federal law or regulation, federal-state programs or federally delegated programs; specifying the appointment, term, qualifications, oath, bond and compensation of administrators of all transferred and incorporated agencies and boards; authorizing dual office-holding; providing for the transfer of records, property and personnel; providing for a report to the Legislature concerning further reorganization of the executive branch of state government; providing operative date for implementation; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new chapter, designated chapter five-f, to read as follows:

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

Article

1. General provisions.
2. Transfer of Agencies and Boards.
3. Future Reorganizations; Severability.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-1. Legislative findings and declarations.

§5F-1-2. Executive departments created; offices of secretary created; funds.

§5F-1-3. Oath; bond; compensation.

§5F-1-4. Definitions.

§5F-1-1. Legislative findings and declarations.

- 1 (a) The Legislature hereby finds and declares that
- 2 state government must be made more responsive to the
- 3 citizens of the state; that the various agencies and
- 4 boards responsible for the execution of the laws of this
- 5 state must be improved; that more effective manage-
- 6 ment of the executive branch of state government must
- 7 be achieved; that the efficiency of the operations of the
- 8 agencies and boards of state government must be

9 increased; and that in view of the financial crisis facing
10 the state of West Virginia, it is essential to compel a
11 curtailment and reduction of governmental expenses
12 and hold them within reasonable bounds consistent with
13 the economical and efficient administration of govern-
14 mental services and to ensure the strictest economy in
15 the matter of governmental expenditures to the end that
16 agencies and boards of government may not be com-
17 pelled to abdicate their responsibilities or cease to
18 function but that in carrying out their responsibilities
19 they shall not place upon the public any expense which
20 is not necessary. The Legislature further hereby finds
21 and declares that in order to achieve these purposes, it
22 is essential to reorganize the executive branch of state
23 government so as to:

24 (1) Promote the execution of the laws, the more
25 effective management of the executive branch and of its
26 agencies, boards and functions, and the expeditious
27 administration of the public business;

28 (2) Reduce expenditures and promote economy to the
29 fullest extent consistent with the efficient operation of
30 state government;

31 (3) Increase the efficiency of the operations of state
32 government to the fullest extent practicable;

33 (4) Group, coordinate and consolidate agencies and
34 functions of state government, as nearly as may be,
35 according to purposes;

36 (5) Consolidate or combine those agencies having
37 similar or complementary functions under a single head,
38 and, after observing and analyzing the operation of such
39 consolidated or combined agencies for a period of time,
40 abolish by legislative act, where legislative action is
41 required, such agencies or functions thereof as are
42 determined not to be necessary or desirable for the
43 efficient conduct of the state government;

44 (6) Eliminate duplication of effort;

45 (7) Provide for appropriate legislative oversight as
46 mandated in the constitution of this state; and

47 (8) Provide for a spirit of cooperation and unity
48 between the executive and legislative branches in
49 addressing and developing solutions to the problems
50 facing the state.

51 (b) This chapter is enacted in view and because of the
52 findings and declarations set forth in subsection (a) of
53 this section and shall be construed in the light thereof.

**§5F-1-2. Executive departments created; offices of
secretary created; funds.**

1 (a) There are hereby created, within the executive
2 branch of the state government, the following
3 departments:

4 (1) Department of administration;

5 (2) Department of commerce, labor and environmen-
6 tal resources;

7 (3) Department of education and the arts;

8 (4) Department of health and human resources;

9 (5) Department of public safety;

10 (6) Department of tax and revenue; and

11 (7) Department of transportation.

12 (b) Each department shall be headed by a secretary
13 who shall be appointed by the governor by and with the
14 advice and consent of the Senate and who shall serve at
15 the will and pleasure of the governor.

§5F-1-3. Oath; bond; compensation.

1 (a) Each person appointed to serve as a secretary shall
2 take the oath or affirmation prescribed by section five,
3 article four of the constitution, and such oath shall be
4 certified by the person who administers the same and
5 filed in the office of the secretary of state.

6 (b) Each person so appointed shall give bond in the
7 penalty of twenty-five thousand dollars conditioned for
8 the faithful performance of the duties of the office,
9 which bond shall be approved by the attorney general
10 as to form and by the governor as to sufficiency. The

11 surety of such bond may be a bonding or surety
12 company, in which case the premium shall be paid out
13 of the appropriation made for the administration of the
14 department.

15 (c) Each secretary shall receive an annual salary as
16 shall be fixed from time to time by the governor within
17 the limit of funds appropriated to the department and
18 available for such purpose.

19 (d) The salary and expenses necessary for each
20 secretary and all expenditures for personal services for
21 the office of secretary shall be paid from and within
22 existing appropriations made to the agencies and boards
23 transferred to the department headed by that secretary,
24 and revised expenditure schedules shall be submitted to
25 the commissioner of finance and administration and the
26 legislative auditor stating the amount and source of
27 funds to be expended: *Provided*, That for fiscal years
28 beginning the first day of July, one thousand nine
29 hundred eighty-nine, such amounts shall follow the
30 procedures described in chapter five-a of this code.

§5F-1-4. Definitions.

1 (a) As used in this chapter, unless the context clearly
2 requires a different meaning:

3 (1) "Administrator" means any person who fills a
4 statutorily created position within or related to an
5 agency or board (other than a board member) and who
6 is designated by statute as commissioner, deputy
7 commissioner, assistant commissioner, director, cancel-
8 lor, chief, executive director, executive secretary,
9 superintendent, deputy superintendent, or other admi-
10 nistrative title, however designated;

11 (2) "Agency" means any department, division, fund,
12 office, position, system, survey or other entity of state
13 government, however designated, transferred to and
14 incorporated in one of the departments created in
15 section two of this article;

16 (3) "Board" means any board, commission, authority,
17 council, or other body, however designated, consisting of
18 two or more members, transferred to and incorporated

19 in one of the departments created in section two of this
20 article;

21 (4) "Code" means the code of West Virginia, one
22 thousand nine hundred thirty-one, as heretofore and
23 hereafter amended; and

24 (5) "Secretary" means the administrative head of one
25 of the departments created in section two of this article.

26 (b) Although each term defined in subsection (a) of
27 this section is in the singular, the plural of any term
28 shall have the same meaning.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards.

§5F-2-2. Power and authority of secretary of each department.

§5F-2-3. Administrators; appointment; oath; bond; compensation.

§5F-2-4. Transfer of records, property and personnel.

§5F-2-1. Transfer and incorporation of agencies and boards.

1 (a) The following agencies and boards, including all
2 of the allied, advisory, affiliated or related entities and
3 funds associated with any such agency or board, are
4 hereby transferred to and incorporated in and shall be
5 administered as a part of the department of
6 administration:

7 (1) Building commission provided for in article six,
8 chapter five of this code;

9 (2) Records management and preservation advisory
10 committee provided for in article eight, chapter five of
11 this code;

12 (3) Public employees retirement system and board of
13 trustees provided for in article ten, chapter five of this
14 code;

15 (4) Public employees insurance agency and public
16 employees advisory board provided for in article sixteen,
17 chapter five of this code;

18 (5) Department of finance and administration and
19 council of finance and administration provided for in
20 article one, chapter five-a of this code;

21 (6) Employee suggestion award board provided for in
22 article one-a, chapter five-a of this code;

23 (7) Governor's mansion advisory committee provided
24 for in article four-a, chapter five-a of this code;

25 (8) Advisory commission to the information system
26 services division in the department of finance and
27 administration provided for in article seven, chapter
28 five-a of this code;

29 (9) Teachers retirement system and teachers' retire-
30 ment board provided for in article seven-a, chapter
31 eighteen of this code;

32 (10) Commission on uniform state laws provided for
33 in article one-a, chapter twenty-nine of this code;

34 (11) Department of personnel of the civil service
35 system and the civil service commission provided for in
36 article six, chapter twenty-nine of this code;

37 (12) Education and state employees grievance board
38 provided for in article twenty-nine, chapter eighteen
39 and article six-a, chapter twenty-nine of this code;

40 (13) Board of risk and insurance management pro-
41 vided for in article twelve, chapter twenty-nine of this
42 code;

43 (14) Boundary commission provided for in article
44 twenty-three, chapter twenty-nine of this code;

45 (15) Public legal services council provided for in
46 article twenty-one, chapter twenty-nine of this code;

47 (16) Division of personnel which may be hereafter
48 created by the Legislature; and

49 (17) The West Virginia ethics commission which may
50 be hereafter created by the Legislature.

51 (b) The following agencies and boards, including all
52 of the allied, advisory, affiliated or related entities and
53 funds associated with any such agency or board, are
54 hereby transferred to and incorporated in and shall be
55 administered as a part of the department of commerce,
56 labor and environmental resources:

- 57 (1) Forest management review commission provided
58 for in article twenty-four, chapter five of this code;
- 59 (2) Department of commerce provided for in article
60 one, chapter five-b of this code;
- 61 (3) Office of community and industrial development
62 provided for in article two, chapter five-b of this code;
- 63 (4) Enterprise zone authority provided for in article
64 two-b, chapter five-b of this code;
- 65 (5) Office of federal procurement assistance provided
66 for in article two-c, chapter five-b of this code;
- 67 (6) Export development authority provided for in
68 article three, chapter five-b of this code;
- 69 (7) Labor-management council provided for in article
70 four, chapter five-b of this code;
- 71 (8) Industry and jobs development corporation pro-
72 vided for in article one, chapter five-c of this code;
- 73 (9) Public energy authority and board provided for in
74 chapter five-d of this code;
- 75 (10) Air pollution control commission provided for in
76 article twenty, chapter sixteen of this code;
- 77 (11) Resource recovery—solid waste disposal author-
78 ity provided for in article twenty-six, chapter sixteen of
79 this code;
- 80 (12) Division of forestry and forestry commission
81 provided for in article one-a, chapter nineteen of this
82 code;
- 83 (13) Department of natural resources and natural
84 resources commission provided for in article one,
85 chapter twenty of this code;
- 86 (14) Water resources board provided for in article
87 five, chapter twenty of this code;
- 88 (15) Water development authority and board provided
89 for in article five-c, chapter twenty of this code;
- 90 (16) Department of labor provided for in article one,
91 chapter twenty-one of this code;

- 92 (17) Labor-management relations board provided for
93 in article one-b, chapter twenty-one of this code;
- 94 (18) Public employees occupational safety and health
95 advisory board provided for in article three-a, chapter
96 twenty-one of this code;
- 97 (19) Minimum wage rate board provided for in article
98 five-a, chapter twenty-one of this code;
- 99 (20) Board of manufactured housing construction and
100 safety provided for in article nine, chapter twenty-one
101 of this code;
- 102 (21) Department of energy provided for in article one,
103 chapter twenty-two of this code;
- 104 (22) Reclamation board of review provided for in
105 article four, chapter twenty-two of this code;
- 106 (23) Board of appeals provided for in article five,
107 chapter twenty-two of this code;
- 108 (24) Board of coal mine health and safety and coal
109 mine safety and technical review committee provided
110 for in article six, chapter twenty-two of this code;
- 111 (25) Shallow gas well review board provided for in
112 article seven, chapter twenty-two of this code;
- 113 (26) Oil and gas conservation commission provided for
114 in article eight, chapter twenty-two of this code;
- 115 (27) Board of miner training, education and certifica-
116 tion provided for in article nine, chapter twenty-two of
117 this code;
- 118 (28) Mine inspectors' examining board provided for in
119 article eleven, chapter twenty-two of this code;
- 120 (29) Oil and gas inspectors' examining board provided
121 for in article thirteen, chapter twenty-two of this code;
- 122 (30) Geological and economic survey provided for in
123 article two, chapter twenty-nine of this code;
- 124 (31) Blennerhassett historical park commission pro-
125 vided for in article eight, chapter twenty-nine of this
126 code;

127 (32) Tourist train and transportation board provided
128 for in article twenty-four, chapter twenty-nine of this
129 code;

130 (33) Economic development authority provided for in
131 article fifteen, chapter thirty-one of this code;

132 (34) Board of members of the forest industries
133 industrial foundation provided for in article sixteen,
134 chapter thirty-one of this code;

135 (35) Department of banking provided for in article
136 two, chapter thirty-one-a of this code;

137 (36) Board of banking and financial institutions
138 provided for in article three, chapter thirty-one-a of this
139 code;

140 (37) Consumer affairs advisory council provided for in
141 article seven, chapter forty-six-a of this code; and

142 (38) Lending and credit rate board provided for in
143 chapter forty-seven-a of this code.

144 (c) The following agencies and boards, including all
145 of the allied, advisory, affiliated or related entities and
146 funds associated with any such agency or board, are
147 hereby transferred to and incorporated in and shall be
148 administered as a part of the department of education
149 and the arts:

150 (1) Library commission provided for in article one,
151 chapter ten of this code;

152 (2) Educational broadcasting authority provided for
153 in article five, chapter ten of this code;

154 (3) Board of regents provided for in article twenty-six,
155 chapter eighteen of this code; and

156 (4) Department of culture and history, archives and
157 history commission and commission on the arts provided
158 for in article one, chapter twenty-nine of this code.

159 (d) The following agencies and boards, including all
160 of the allied, advisory, affiliated or related entities and
161 funds associated with any such agency or board, are
162 hereby transferred to and incorporated in and shall be

163 administered as a part of the department of health and
164 human resources:

165 (1) Human rights commission provided for in article
166 eleven, chapter five of this code;

167 (2) Department of human services provided for in
168 article two, chapter nine of this code;

169 (3) Department of veterans' affairs and veterans'
170 council provided for in article one, chapter nine-a of this
171 code;

172 (4) Department of health and board of health pro-
173 vided for in article one, chapter sixteen of this code;

174 (5) Health care planning council provided for in
175 article two-d, chapter sixteen of this code;

176 (6) Office of emergency medical services and advisory
177 council thereto provided for in article four-c, chapter
178 sixteen of this code;

179 (7) Continuum of care board for the elderly, disabled
180 and terminally ill provided for in article five-d, chapter
181 sixteen of this code;

182 (8) Hospital finance authority provided for in article
183 twenty-nine-a, chapter sixteen of this code;

184 (9) Health care cost review authority provided for in
185 article twenty-nine-b, chapter sixteen of this code;

186 (10) Structural barriers compliance board provided
187 for in article ten-f, chapter eighteen of this code;

188 (11) Department of employment security, state advi-
189 sory council thereto and board of review provided for
190 in chapter twenty-one-a of this code;

191 (12) Office of workers' compensation commissioner,
192 advisory board thereto and workers' compensation
193 appeal board provided for in chapter twenty-three of
194 this code;

195 (13) Commission on aging provided for in article
196 fourteen, chapter twenty-nine of this code;

197 (14) Commission on mental retardation and advisory

198 committee thereto provided for in article fifteen,
199 chapter twenty-nine of this code;

200 (15) Women's commission provided for in article
201 twenty, chapter twenty-nine of this code; and

202 (16) Commission on children and youth provided for
203 in article six-c, chapter forty-nine of this code.

204 (e) The following agencies and boards, including all
205 of the allied, advisory, affiliated or related entities and
206 funds associated with any such agency or board, are
207 hereby transferred to and incorporated in and shall be
208 administered as a part of the department of public
209 safety:

210 (1) Crime victims compensation fund provided for in
211 article two-a, chapter fourteen of this code;

212 (2) Adjutant general's department provided for in
213 article one-a, chapter fifteen of this code;

214 (3) Armory board provided for in article six, chapter
215 fifteen of this code;

216 (4) Military awards board provided for in article one-
217 g, chapter fifteen of this code;

218 (5) Department of public safety and commission on
219 drunk driving prevention provided for in article two,
220 chapter fifteen of this code;

221 (6) Office of emergency services and emergency
222 services advisory council provided for in article five,
223 chapter fifteen of this code;

224 (7) Sheriffs' bureau provided for in article eight,
225 chapter fifteen of this code;

226 (8) Department of corrections provided for in chapter
227 twenty-five of this code;

228 (9) Fire commission and state fire administrator
229 provided for in article three, chapter twenty-nine of this
230 code;

231 (10) Regional jail and prison authority provided for in
232 article twenty, chapter thirty-one of this code; and

233 (11) Board of probation and parole provided for in
234 article twelve, chapter sixty-two of this code.

235 (f) The following agencies and boards, including all of
236 the allied, advisory, affiliated or related entities and
237 funds associated with any such agency or board, are
238 hereby transferred to and incorporated in and shall be
239 administered as a part of the department of tax and
240 revenue:

241 (1) Tax department provided for in article one,
242 chapter eleven of this code;

243 (2) Appraisal control and review commission provided
244 for in article one-a, chapter eleven of this code;

245 (3) Office of nonintoxicating beer commissioner
246 provided for in article sixteen, chapter eleven of this
247 code;

248 (4) Board of investments provided for in article six,
249 chapter twelve of this code;

250 (5) Municipal bond commission provided for in article
251 three, chapter thirteen of this code;

252 (6) Racing commission provided for in article twenty-
253 three, chapter nineteen of this code;

254 (7) Lottery commission and position of lottery director
255 provided for in article twenty-two, chapter twenty-nine
256 of this code;

257 (8) Agency of insurance commissioner provided for in
258 article two, chapter thirty-three of this code;

259 (9) Office of alcohol beverage control commissioner
260 provided for in article two, chapter sixty of this code;
261 and

262 (10) Division of professional and occupational licenses
263 which may be hereafter created by the Legislature.

264 (g) The following agencies and boards, including all
265 of the allied, advisory, affiliated or related entities and
266 funds associated with any such agency or board, are
267 hereby transferred to and incorporated in and shall be
268 administered as a part of the department of transpor-
269 tation:

- 270 (1) Road commission provided for in article two,
271 chapter seventeen of this code;
- 272 (2) Department of highways provided for in article
273 two-a, chapter seventeen of this code;
- 274 (3) Turnpike commission provided for in article
275 sixteen-a, chapter seventeen of this code;
- 276 (4) Department of motor vehicles provided for in
277 article two, chapter seventeen-a of this code;
- 278 (5) Driver's licensing advisory board provided for in
279 article two, chapter seventeen-b of this code;
- 280 (6) Motorcycle safety standards and specifications
281 board provided for in article fifteen, chapter seventeen-
282 c of this code;
- 283 (7) Aeronautics commission provided for in article
284 two-a, chapter twenty-nine of this code;
- 285 (8) Railroad maintenance authority provided for in
286 article eighteen, chapter twenty-nine of this code; and
- 287 (9) Port authority which may be hereafter created by
288 the Legislature.
- 289 (h) Except for such powers, authority and duties as
290 have been delegated to the secretaries of the depart-
291 ments by the provisions of section two of this article, the
292 existence of the position of administrator and of the
293 agency and the powers, authority and duties of each
294 administrator and agency shall not be affected by the
295 enactment of this chapter.
- 296 (i) Except for such powers, authority and duties as
297 have been delegated to the secretaries of the depart-
298 ments by the provisions of section two of this article, the
299 existence, powers, authority and duties of boards and
300 the membership, terms and qualifications of members
301 of such boards shall not be affected by the enactment
302 of this chapter, and all boards which are appellate
303 bodies or were otherwise established to be independent
304 decision-makers shall not have their appellate or
305 independent decision-making status affected by the
306 enactment of this chapter.

307 (j) Wherever elsewhere in this code, in any act, in
308 general or other law, in any rule or regulation, or in any
309 ordinance, resolution or order, reference is made to any
310 department transferred to and incorporated in a
311 department created in section two, article one of this
312 chapter, such reference shall henceforth be read,
313 construed and understood to mean a division of the
314 appropriate department so created, and any such
315 reference elsewhere to a division of a department so
316 transferred and incorporated shall henceforth be read,
317 construed and understood to mean a section of the
318 appropriate division of the department so created.

**§5F-2-2. Power and authority of secretary of each
department.**

1 (a) Notwithstanding any other provision of this code
2 to the contrary, the secretary of each department shall
3 have plenary power and authority within and for the
4 department to:

5 (1) Employ and discharge within the office of the
6 secretary such employees as may be necessary to carry
7 out the functions of the secretary, which employees shall
8 serve at the will and pleasure of the secretary;

9 (2) Cause the various agencies and boards to be
10 operated effectively, efficiently and economically, and
11 develop goals, objectives, policies and plans that are
12 necessary or desirable for the effective, efficient and
13 economical operation of the department;

14 (3) Eliminate or consolidate positions, other than
15 positions of administrators or positions of board
16 members, and name a person to fill more than one
17 position;

18 (4) Delegate, assign, transfer or combine responsibil-
19 ities or duties to or among employees, other than
20 administrators or board members;

21 (5) Reorganize internal functions or operations;

22 (6) Formulate comprehensive budgets for considera-
23 tion by the governor, and transfer within the depart-

24 ment funds appropriated to the various agencies of the
25 department which are not expended due to cost savings
26 resulting from the implementation of the provisions of
27 this chapter: *Provided*, That no more than twenty-five
28 percent of the funds appropriated to any one agency or
29 board may be transferred to other agencies or boards
30 within the department: *Provided, however*, That no
31 funds may be transferred from a special revenue
32 account, dedicated account, capital expenditure account
33 or any other account or funds specifically exempted by
34 the Legislature from transfer, except that the use of
35 appropriations from the state road fund transferred to
36 the office of the secretary of the department of trans-
37 portation is not a use other than the purpose for which
38 such funds were dedicated and is permitted: *Provided*
39 *further*, That if the Legislature by subsequent enactment
40 consolidates agencies, boards or functions, the secretary
41 may transfer the funds formerly appropriated to such
42 agency, board or function in order to implement such
43 consolidation. The authority to transfer funds under this
44 section shall expire on the thirtieth day of June, one
45 thousand nine hundred eighty-nine;

46 (7) Enter into contracts or agreements requiring the
47 expenditure of public funds, and authorize the expen-
48 diture or obligating of public funds as authorized by
49 law: *Provided*, That the powers granted to the secretary
50 to enter into contracts or agreements and to make
51 expenditures or obligations of public funds under this
52 provision shall not exceed or be interpreted as authority
53 to exceed the powers heretofore granted by the Legis-
54 lature to the various commissioners, directors or board
55 members of the various departments, agencies or boards
56 that comprise and are incorporated into each secretary's
57 department under this chapter;

58 (8) Acquire by lease or purchase property of whatever
59 kind or character, and convey or dispose of any property
60 of whatever kind or character as authorized by law:
61 *Provided*, That the powers granted to the secretary to
62 lease, purchase, convey or dispose of such property shall
63 not exceed or be interpreted as authority to exceed the
64 powers heretofore granted by the Legislature to the

65 various commissioners, directors or board members of
66 the various departments, agencies or boards that
67 comprise and are incorporated into each secretary's
68 department under this chapter;

69 (9) Conduct internal audits;

70 (10) Supervise internal management;

71 (11) Promulgate rules, as defined in section two,
72 article one, chapter twenty-nine-a of this code, to
73 implement and make effective the powers, authority and
74 duties granted and imposed by the provisions of this
75 chapter, such promulgation to be in accordance with the
76 provisions of chapter twenty-nine-a of this code;

77 (12) Grant or withhold written consent to the proposal
78 of any rule, as defined in section two, article one,
79 chapter twenty-nine-a of this code, by any administra-
80 tor, agency or board within the department, without
81 which written consent no proposal of a rule shall have
82 any force or effect;

83 (13) Delegate to administrators such duties of the
84 secretary as the secretary may deem appropriate from
85 time to time to facilitate execution of the powers,
86 authority and duties delegated to the secretary; and

87 (14) Take any other action involving or relating to
88 internal management not otherwise prohibited by law.

89 (b) The secretaries of the departments hereby created
90 shall engage in a comprehensive review of the practices,
91 policies, and operations of the agencies and boards
92 within their departments to determine the feasibility of
93 cost reductions and increased efficiency which may be
94 achieved therein, including, but not limited to, the
95 following:

96 (1) The elimination, reduction and restrictions in the
97 use of the state's vehicle or other transportation fleet;

98 (2) The elimination, reduction and restrictions in the
99 preparation of state government publications, including
100 annual reports, informational materials, and promo-
101 tional materials;

102 (3) The termination or renegotiation of terms con-
103 tained in lease agreements between the state and private
104 sector for offices, equipment and services;

105 (4) The adoption of appropriate systems for account-
106 ing, including consideration of an accrual basis financial
107 accounting and reporting system;

108 (5) The adoption of revised procurement practices to
109 facilitate cost effective purchasing procedures, includ-
110 ing consideration of means by which domestic busi-
111 nesses may be assisted to compete for state government
112 purchases; and

113 (6) The computerization of the functions of the state
114 agencies and boards.

115 (c) Notwithstanding the provisions of subsections
116 (a) and (b) of this section, none of the powers granted
117 to the secretaries herein shall be exercised by the
118 secretary if to do so would violate or be inconsistent with
119 the provisions of any federal law or regulation, any
120 federal-state program or federally delegated program or
121 jeopardize the approval, existence or funding of any
122 such program, and the powers granted to the secretary
123 shall be so construed.

124 (d) The layoff and recall rights of employees within
125 the classified service of the state as provided in
126 subsections five and six, section ten, article six, chapter
127 twenty-nine of this code shall be limited to the organ-
128 izational unit within the agency or board and within the
129 promotional series of the agency or board in which the
130 employee was employed prior to the agency or board's
131 transfer or incorporation into the department. The
132 duration of recall rights provided in this subsection shall
133 be limited to two years or the length of tenure,
134 whichever is less. Except as provided in this subsection,
135 nothing contained in this section shall be construed to
136 abridge the rights of employees within the classified
137 service of the state as provided in sections ten and ten-
138 a, article six, chapter twenty-nine of this code or the
139 right of classified employees of the board of regents to
140 the procedures and protections set forth in article
141 twenty-six-b, chapter eighteen of this code.

§5F-2-3. Administrators; appointment; oath; bond; compensation.

1 (a) Notwithstanding any other provision of this code
2 (including subsections (h) and (i), section one of this
3 article) to the contrary, each administrator required by
4 other provisions of this code to be appointed by the
5 governor shall:

6 (1) Continue to be appointed by the governor by and
7 with the advice and consent of the Senate and each such
8 administrator shall serve at the will and pleasure of the
9 governor, and the governor may appoint a person to fill
10 more than one such position of administrator and may
11 appoint a secretary to fill one or more positions of such
12 administrator, but each person appointed as such an
13 administrator must possess whatever qualifications are
14 elsewhere specified in this code as being required for
15 appointment to such position;

16 (2) Take the oath of office or affirmation prescribed
17 by section five, article four of the constitution, and such
18 oath shall be certified by the person who administers the
19 same and filed in the office of the secretary of state;

20 (3) Give bond in the penalty of fifteen thousand
21 dollars conditioned for the faithful performance of the
22 duties of the office, which bond shall be approved by the
23 attorney general as to form and by the secretary as to
24 sufficiency. The surety of such bond may be a bonding
25 or surety company, in which case the premium shall be
26 paid out of the appropriation made for the administra-
27 tion of the department; and

28 (4) Receive an annual salary as shall be fixed from
29 time to time by the governor and secretary within the
30 limit of funds appropriated to the department and
31 available for such purpose.

32 (b) Each administrator required by other provisions
33 of this code to be appointed in any manner other than
34 by the governor shall continue to be appointed, shall
35 take such oath of office, give such bond and receive such
36 salary as shall be so specified by such other provisions
37 of this code.

§5F-2-4. Transfer of records, property and personnel.

1 All records, assets and property, of whatever kind or
2 character, owned by or utilized in the administration of
3 the agencies and boards and all of the personnel utilized
4 in the administration of such agencies and boards,
5 including the administrators, are hereby transferred to
6 the respective department to and in which such agencies
7 and boards are transferred and incorporated.

ARTICLE 3. FUTURE REORGANIZATION; SEVERABILITY.

§5F-3-1. Recommendations for further reorganization.

§5F-3-2. Operative dates.

§5F-3-3. Severability.

§5F-3-1. Recommendations for further reorganization.

1 The governor shall submit to the Legislature on or
2 before the first day of January, one thousand nine
3 hundred ninety-one, a report setting forth the reorgan-
4 ization implemented by executive action pursuant to this
5 chapter and resulting cost savings as determined by the
6 governor, any recommendations for further reorganiza-
7 tion requiring legislative action and drafts of recom-
8 mended legislation to implement the reorganization
9 requiring legislative action.

§5F-3-2. Operative dates.

1 The provisions of this chapter shall become operative
2 as to any department created in section two, article one
3 of this chapter upon the appointment of the secretary
4 of such department.

§5F-3-3. Severability.

1 If any provision of this chapter or the application
2 thereof to any person or circumstance is held unconsti-
3 tutional or invalid, such unconstitutionality or invalidity
4 shall not affect other provisions or applications of the
5 chapter, and to this end the provisions of this chapter
6 are declared to be severable.

CHAPTER 4

(Com. Sub. for H. B. 102—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed January 31, 1989; in effect from passage. Approved by the Governor.]

AN ACT to repeal section seven-a, article fourteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three and fifteen, article fourteen of said chapter eleven; to further amend said article fourteen by adding thereto a new section, designated section five-a; to amend and reenact sections five and seven of said article fourteen-a; and to further amend said article fourteen-a by adding thereto two new sections, designated sections three-a and twenty-eight, all relating generally to gasoline and motor fuel excise taxes; increasing the rate of tax to fifteen and one-half cents per gallon of gasoline or special fuel beginning the first day of April, one thousand nine hundred eighty-nine; exempting from gasoline and special fuel excise tax and from consumers sales tax bulk sales of gasoline or special fuel to interstate motor carriers provided the motor carrier road tax and the use tax are paid on such gallons used in this state; providing administrative procedures for this exemption and its effective date; repealing the motor carrier road tax surtax as of the first day of April, one thousand nine hundred eighty-nine; establishing primary liability for payment of registration fees and motor carrier road tax when motor carrier is leased or rented; requiring annual reports from motor carriers operating solely in this state in lieu of quarterly reports; providing for issuance of temporary trip permits and issuance of annual transporters permits, and setting fees therefor; imposing criminal penalties; authorizing exchange of motor carrier information between certain agencies when purpose of exchange is to administer a combined trip permit program; authorizing issuance of combined trip permits and specifying fee therefor; dedicating the sum of twenty-five million dollars to bridge replacement or

repair; authorizing the use of the proceeds to be used to match federal amounts available for expenditure on the Appalachian Highway System, providing that amounts remaining after funding the foregoing priorities shall be used for the maintenance, construction, repair and reconstruction of state highways; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That section seven-a, article fourteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three and fifteen, article fourteen of said chapter eleven be amended and reenacted; that said article fourteen be further amended by adding thereto a new section, designated section five-a; that sections five and seven of said article fourteen-a be amended and reenacted; and that said article fourteen-a be further amended by adding thereto two new sections, designated sections three-a and twenty-eight, all to read as follows:

Article

14. Gasoline and Special Fuel Excise Tax.

14A. Motor Carrier Road Tax.

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-3. Imposition of tax.

§11-14-5a. Exemption for bulk sales to interstate motor carriers.

§11-14-15. Disposition of tax collected.

§11-14-3. Imposition of tax.

1 There is hereby levied an excise tax of ten and one-
2 half cents per gallon on all gasoline or special fuel,
3 which tax shall be computed in accordance with the
4 appropriate measure of tax as hereinafter prescribed in
5 this article: *Provided*, That beginning the first day of
6 April, one thousand nine hundred eighty-nine, the tax
7 levied by this article shall be fifteen and one-half cents
8 per gallon.

§11-14-5a. Exemption for bulk sales to interstate motor carriers.

1 (a) In general.—There shall be exempt from the taxes
2 imposed by this article and by article fifteen of this code

3 all gallons of gasoline or special fuel sold by a distrib-
4 utor to an interstate motor carrier having fuel storage
5 tanks in this state which are used solely for the purpose
6 of fueling motor carriers owned, leased or operated by
7 the motor carrier, when the purchase is delivered in
8 bulk quantities of one thousand gallons or more into
9 such fuel storage tanks and is purchased for the motor
10 carrier's exclusive use: *Provided*, That this exemption
11 shall not relieve the person owning or operating a motor
12 carrier from payment of any taxes imposed by article
13 fourteen-a or fifteen-a of this chapter on gasoline or
14 special fuel used or consumed in this state by the motor
15 carrier.

16 (b) Surety bond; release of surety; new bond.—The
17 commissioner may in his discretion require an interstate
18 motor carrier having fuel storage tanks in this state to
19 file a continuous surety bond in an amount to be fixed
20 by the commissioner, except that the amount thereof
21 shall not be less than one thousand dollars. Upon
22 completion of the filing of such surety bond an annual
23 notice of renewal, only, shall be required thereafter. The
24 surety must be authorized to engage in business within
25 this state. This bond shall be conditioned upon the motor
26 carrier's faithful compliance with the provisions of this
27 article and articles fourteen-a and fifteen-a of this
28 chapter with respect to such gasoline or special fuel,
29 including the filing of the returns and payment of all
30 tax due with respect to such gasoline or special fuel.
31 Such bond shall be approved by the commissioner as to
32 sufficiency and by the attorney general as to form, and
33 shall indemnify the state against any loss arising from
34 the failure of the taxpayer for whatever reason to pay
35 any tax imposed by article fourteen-a or fifteen-a of this
36 chapter on gasoline or special fuel purchased as
37 provided in this section which was used or consumed in
38 operation of the motor carrier in this state: *Provided*,
39 That a noninterest bearing cash deposit may be accepted
40 by the commissioner in lieu of such bond. The cash
41 deposit shall be in an amount to be fixed by the
42 commissioner, except the amount thereof may not be
43 less than one thousand dollars.

44 (c) Revocation of suspension of exemption.

45 (1) The tax commissioner may revoke or suspend
46 application of this exemption to a motor carrier if:

47 (A) The motor carrier filed a false or fraudulent
48 return for the tax imposed by article fourteen-a or
49 fifteen-a of this chapter on gasoline or special fuel it
50 used or consumed in this state.

51 (B) The motor carrier willfully refused or willfully
52 neglected to file a tax return or willfully failed to report
53 information required by the tax commissioner, concern-
54 ing gasoline or special fuel which it used or consumed
55 in this state, on or before the date specified for filing
56 the return or report.

57 (C) The motor carrier willfully refused or willfully
58 neglected to pay any tax, additions to tax, penalties or
59 interest, or any part thereof, with respect to gasoline or
60 special fuel used or consumed in this state when they
61 became due and payable under this chapter, determined
62 with regard to any authorized extension of time for
63 payment.

64 (2) Before cancelling or suspending this exemption,
65 the tax commissioner shall give written notice to the
66 motor carrier of his intent to suspend or cancel this
67 exemption, the reason for the suspension or cancellation,
68 the effective date of the suspension or cancellation, and
69 the date, time and place where the taxpayer may appear
70 at an informal hearing and show cause why this
71 exemption should not be suspended or canceled. This
72 written notice shall be served on the taxpayer in the
73 same manner as a notice of assessment is served under
74 article ten of this chapter, not less than twenty days
75 prior to the date of such informal hearing. The taxpayer
76 may appeal suspension or cancellation of its exemption
77 under this section in the same manner as a notice of
78 assessment is appealed under article ten of this chapter:
79 *Provided*, That the filing of a petition for appeal shall
80 not stay the effective date of the suspension or cancel-
81 lation. A stay may be granted only after a hearing is
82 held on a motion to stay filed by the motor carrier, upon
83 finding that state revenues will not be jeopardized by

84 the granting of the stay. The tax commissioner may, in
85 his discretion and upon such terms as he may specify,
86 agree to stay the effective date of the suspension or
87 cancellation until another date certain.

88 (3) The tax commissioner shall promptly give notice
89 to distributors in this state of the name and mailing
90 address of every motor carrier whose exemption under
91 this section is suspended or cancelled. The effective date
92 of such suspension or cancellation shall be included, and
93 if this exemption is suspended, the date the suspension
94 expires shall also be provided. The affected motor
95 carrier shall promptly give similar written notice to all
96 distributors from whom he purchases gasoline or special
97 fuel exempt from tax as provided in subsection (a) of
98 this section.

99 (4) A motor carrier whose exemption under this
100 section is cancelled may, after the cancellation has been
101 in effect for twelve months, petition the tax commis-
102 sioner for reinstatement of exemption under this section.
103 The tax commissioner may, in his discretion, and upon
104 such terms as he may require reinstate this exemption,
105 but only if he reasonably believes that the motor carrier
106 will fully and timely comply with this article and the
107 provisions of articles fourteen-a and fifteen-a of this
108 chapter. Upon reinstatement, the motor carrier shall
109 provide his distributor with a true copy of the tax
110 commissioner's order reinstating the exemption.

111 (d) Effective date.—The provisions of this section
112 shall apply to gasoline or special fuel delivered after the
113 thirty-first day of March, one thousand nine hundred
114 eighty-nine.

§11-14-15. Disposition of tax collected.

'1 All tax collected under the provisions of this article
2 shall be paid into the state treasury and shall be used
3 only for the purpose of construction, reconstruction,
4 maintenance and repair of highways, matching of
5 federal moneys available for highway purposes and
6 payment of the interest and sinking fund obligations on
7 state bonds issued for highway purposes: *Provided*, that
8 for fiscal year one thousand nine hundred eighty-nine-

9 ninety, twenty-five million dollars shall be used only for
10 bridge repair and replacement and all amounts remain-
11 ing shall next be used for payment of the interest and
12 sinking fund obligations on state bonds issued for
13 highway purposes: *Provided, however*, that any amounts
14 remaining after funding these priorities shall next be
15 used in matching any federal amounts available for
16 expenditure on the Appalachian highway system in this
17 State: *Provided further*, that any amounts remaining
18 after funding these priorities shall be used for the
19 maintenance, reconstruction and construction of state
20 highways.

21 Unless necessary for such bond requirements, five
22 fourteenths of the tax collected under the provisions of
23 this article shall be used for feeder and state local
24 service highway purposes.

ARTICLE 14A. MOTOR CARRIER ROAD TAX.

§11-14A-3a. Leased motor carriers.

§11-14A-5. Reports of carriers; joint reports; records; examination of records; subpoenas and witnesses.

§11-14A-7. Identification markers; fees; criminal penalty.

§11-14A-28. Effective date.

§11-14A-3a. Leased motor carriers.

1 (a) Motor carriers leased for less than thirty days.—
2 A lessor of motor carriers who is regularly engaged in
3 the business of leasing or renting motor carriers with
4 or without drivers to licensees or other lessees for a
5 period of less than thirty days is primarily liable for
6 payment of the taxes and fees imposed by this article.

7 (b) Motor carriers leased for thirty days or more.—A
8 licensee or other lessee who leases or rents a motor
9 carrier with or without drivers for a period of thirty
10 days or more is primarily liable for payment of the taxes
11 and fees imposed by this article.

12 (c) The provision of subsections (a) and (b) of this
13 section shall govern the primary liability of lessors and
14 licensees or other lessees of motor carriers. If a lessor
15 or licensee or other lessee primarily liable fails, in whole
16 or in part, to discharge his liability, such failing party
17 and other party to the transaction, whether denominated

18 as a lessor, licensee or other lessee, shall be jointly and
19 severally responsible and liable for compliance with the
20 provisions of this article and for payment of any tax or
21 fees due under this article: *Provided*, That the aggregate
22 of taxes and fees collected by the commissioner shall not
23 exceed the total amount or amounts of taxes and fees
24 due under this article on account of the transactions in
25 question plus such interest, additions to tax, other
26 penalties and costs, if any, that may be imposed:
27 *Provided, however*, That no person, other than the person
28 primarily responsible for the taxes and fees under this
29 article, may be assessed penalties or additions to tax
30 resulting from the failure of the party primarily liable
31 for such taxes and fees to pay: *Provided further*, That
32 once such other party to the transaction who is not
33 primarily liable for the taxes under this article but who
34 is made jointly and severally liable under this subsection
35 for such taxes is assessed for those taxes and fees and
36 fails to discharge such assessment within the time
37 prescribed therefor, or within thirty days after receiv-
38 ing such assessment if no time is so prescribed, nothing
39 herein shall prohibit the commissioner from imposing
40 additions to tax or penalties upon that person for failing
41 to pay the assessment issued in his name.

**§11-14A-5. Reports of carriers; joint reports; records;
examination of records; subpoenas and
witnesses.**

1 (a) Every taxpayer subject to the tax imposed by this
2 article, except as provided in subsections (b) and (c) of
3 this section, shall on or before the twenty-fifth day of
4 January, April, July and October of every calendar year
5 make to the commissioner such reports of its operations
6 during the quarter ending the last day of the preceding
7 month as the commissioner may require and such other
8 reports from time to time as the commissioner may
9 deem necessary. For good cause shown, the commis-
10 sioner may extend the time for filing said reports for
11 a period not exceeding thirty days.

12 (b) Every motor carrier which operates exclusively in
13 this state during a fiscal year that begins on the first
14 day of July of one calendar year and ends on the
15 thirtieth day of June of the next succeeding calendar

16 year and during such fiscal year consumes in its
17 operation only gasoline or special fuel upon which the
18 tax imposed by article fourteen of this chapter has been
19 paid shall, in lieu of filing the quarterly reports
20 required by subsection (a), file an annual report for such
21 fiscal year on or before the last day of July each
22 calendar year. For good cause shown, the commissioner
23 may extend the time for filing such report for a period
24 of thirty days.

25 (c) Two or more taxpayers regularly engaged in the
26 transportation of passengers on through buses on
27 through tickets in pool operation may, at their option
28 and upon proper notice to the commissioner, make joint
29 reports of their entire operations in this state in lieu of
30 the separate reports required by subsection (a) of this
31 section. The taxes imposed by this article shall be
32 calculated on the basis of such joint reports as though
33 such taxpayers were a single taxpayer; and the taxpay-
34 ers making such reports shall be jointly and severally
35 liable for the taxes shown thereon to be due. Such joint
36 reports shall show the total number of highway miles
37 traveled in this state and the total number of gallons of
38 gasoline or special fuel purchased in this state by the
39 reporting taxpayers. Credits to which the taxpayers
40 making a joint return are entitled shall not be allowed
41 as credits to any other taxpayer; but taxpayers filing
42 joint reports shall permit all taxpayers engaged in this
43 state in pool operations with them to join in filing joint
44 reports.

45 (d) A taxpayer shall keep such records necessary to
46 verify the highway miles traveled within and without
47 the state of West Virginia, the number of gallons of
48 gasoline and special fuel used and purchased within and
49 without West Virginia and any other records which the
50 commissioner by regulation may prescribe.

51 (e) In addition to the tax commissioner's powers set
52 forth in sections five-a and five-b, article ten of this
53 chapter, the commissioner may inspect or examine the
54 records, books, papers, storage tanks, meters and any
55 equipment records or records of highway miles traveled
56 within and without West Virginia and the records of any

57 other person to verify the truth and accuracy of any
58 statement or report to ascertain whether the tax
59 imposed by this article has been properly paid.

60 (f) In addition to the tax commissioner's powers set
61 forth in sections five-a and five-b, article ten of this
62 chapter, and as a further means of obtaining the
63 records, books and papers of a taxpayer or any other
64 person and ascertaining the amount of taxes and reports
65 due under this article, the commissioner shall have the
66 power to examine witnesses under oath; and if any
67 witness shall fail or refuse at the request of the
68 commissioner to grant access to the books, records and
69 papers, the commissioner shall certify the facts and
70 names to the circuit court of the county having jurisdic-
71 tion of the party and such court shall thereupon issue
72 a subpoena duces tecum to such party to appear before
73 the commissioner, at a place designated within the
74 jurisdiction of such court, on a day fixed.

§11-14A-7. Identification markers; fees; criminal penalty.

1 (a) Registration of motor carriers.—No person may
2 operate, or cause to be operated, in this state any motor
3 carrier subject to this article without first securing from
4 the commissioner an identification marker for each such
5 motor carrier, except as provided in subsection (b) or (c)
6 of this section. Each identification marker for a
7 particular motor carrier shall bear a number. This
8 identification marker shall be displayed on the driver's
9 side of the motor carrier as required by the commis-
10 sioner. The commissioner, after issuance of any identi-
11 fication marker to a motor carrier, shall cause an
12 internal cross-check to be made in his office as to any
13 state tax which he administers, to aid in determination
14 of any noncompliance in respect to failure to file returns
15 or payment of tax liabilities. The identification markers
16 herein provided for shall be valid for the period of one
17 year, ending June thirtieth of each year. A fee of five
18 dollars shall be paid to the commissioner for issuing
19 each identification marker which is reasonably related
20 to the commissioner's costs of issuing such identification.
21 All tax or reports due under this article shall be paid
22 or reports filed before the issuance of a new identifica-

23 tion marker. Failure by a taxpayer to file the returns
24 or pay the taxes imposed by this article shall give cause
25 to the commissioner to revoke or refuse to renew the
26 identification marker previously issued.

27 (b) Trip permit.—A motor carrier that does not have
28 a motor carrier identification marker issued under
29 subsection (a) of this section may obtain a trip permit
30 which authorizes the motor carrier specified therein to
31 be operated in this state without an identification
32 marker for a period of not more than ten consecutive
33 days beginning and ending on the dates specified on the
34 face of the permit. The fee for this permit shall be
35 twenty-four dollars.

36 (1) Fees for trip permits shall be in lieu of the tax
37 otherwise due under this article on account of the
38 vehicles specified in the permit operating in this state
39 during the period of the permit, and no reports of
40 mileage shall be required with respect to that vehicle.

41 (2) A trip permit shall be issued if, in the course of
42 the motor carrier's operations, it operates on the public
43 roads or highways in this state no more than three times
44 in any one fiscal year of this state, and a motor carrier
45 may obtain no more than three such trip permits in any
46 fiscal year of this state.

47 (3) A trip permit shall be carried in the cab of the
48 motor vehicle for which it was issued at all times while
49 it is in this state.

50 (4) A trip permit may be obtained from the commis-
51 sioner or from wire services authorized by the commis-
52 sioner to issue such permits. The cost of the telegram
53 or similar transmissions shall be the responsibility of the
54 motor carrier requesting the trip permit.

55 (c) Transportation permit.—The commissioner is
56 hereby authorized to grant, in his discretion, a special
57 permit to a new motor vehicle dealer for use on new
58 motor vehicles driven under their own power from the
59 factory or distributing place of a manufacturer, or other
60 dealer, to a place of business of the new vehicle dealer,
61 or from the place of business of a new vehicle dealer to

62 a place of business of another dealer, or when delivered
63 from the place of business of the new vehicle dealer to
64 the place of business of a purchaser to whom title passes
65 on delivery. A transporter's permit must be carried in
66 the cab of the motor vehicle being transported. A person
67 to whom a transporter's permit is issued shall file the
68 reports required by section five of this article and pay
69 any tax due. The fee for such transporter's permit shall
70 be fifteen dollars and a transporter's permit is valid for
71 the fiscal year for which it is issued unless surrendered
72 or revoked by the tax commissioner.

73 (d) Criminal penalty.—Any person, whether such
74 person be the owner, licensee or lessee, or the employee,
75 servant or agent thereof, who operates or causes to be
76 operated in this state, a motor carrier in violation of this
77 section, is guilty of a misdemeanor, and, upon conviction
78 thereof, shall be fined not less than fifty nor more than
79 five hundred dollars; and each day such violation
80 continues or reoccurs shall constitute a separate offense.

81 (e) Notwithstanding the provisions of section five-d,
82 article ten of this chapter, the commissioner shall
83 deliver to or receive from the commissioner of the
84 department of motor vehicles and the commissioner of
85 the public service commission, the information con-
86 tained in the application filed by a motor carrier for a
87 trip permit under this section, when the information is
88 used to administer a combined trip permit registration
89 program for motor carriers operating in this state,
90 which program may be administered by one agency or
91 any combination of the three agencies, as embodied in
92 a written agreement executed by the head of each
93 agency participating in the program. Such agencies
94 have authority to enter into such an agreement notwith-
95 standing any provision of this code to the contrary; and
96 the fee for such combined trip permit shall be twenty-
97 four dollars, which shall be in lieu of the fee set forth
98 in subsection (b) of this section.

§11-14A-28. Effective date.

1 The provisions of this act shall take effect on the first
2 day of April, one thousand nine hundred eighty-nine.

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